154 U.S. 225

RECORD, CASE NO. 14382.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1892.

TERM No., ~~587~~. 331

THE UNITED STATES, APPELLANT,

vs.

THE ILLINOIS CENTRAL RAILROAD COMPANY ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED OCTOBER 25, 1892

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1 Pleas in the circuit court of the United States of America for the northern district of Illinois held at the United States court rooms in the city of Chicago in the district aforesaid, before the Hon. Henry W. Blodgett, judge of the district court of the United States for said northern district of Illinois, on Saturday, the twenty-third day of August, in the July term of said court, in the year of our Lord one thousand eight hundred and ninety, and of our independence the one hundred and fifteenth year. Wm. H. Bradley, Clerk.

THE UNITED STATES OF AMERICA *vs.* THE ILLINOIS CENTRAL RAILROAD COMPANY, Michigan Central Railroad Company, Chicago, Burlington & Quincy Railroad Company, Baltimore & Ohio Railroad Company, Baltimore & Ohio & Chicago Railroad Company, and the City of Chicago.	In chancery.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered that on the twenty-second day of June, 1887, came the complainant, by its solicitor, and filed in the office of the clerk of the circuit court of the United States for the northern district of Illi-
2 nois, at Chicago, in said district, its information in said entitled cause, which said information is in the words and figures following to wit:

3 *To the judges of the circuit court of the United States of America for the northern district of Illinois, northern division:*

Informing, shows unto your honors William G. Ewing, attorney of the United States of America for the northern district of Illinois, on behalf of the said United States, that by a deed of cession, bearing date of the first day of March, A. D. 1784, and authorized by a previous act of the general assembly of the commonwealth of Virginia, that commonwealth granted and conveyed to the said United States, for the benefit of the said States, the territory northwest of the river Ohio, as well the soil as the jurisdiction thereof, on certain conditions in the said act and cession contained, among others a condition that the States to be formed out of the said territory should be admitted members of the Federal Union, having the same rights of sovereignty, freedom, and independence as the other States; whereby the territory aforesaid, as well soil as jurisdiction, became vested in the said United States, for the use and on the conditions above mentioned. And by an act of Congress of the third day of April, A. D. 1809, a part of the tract of country so ceded was formed into a territory called the Illinois Territory; and afterwards by and in pursuance of an act of Congress of the eighteenth day of April, A. D. 1818, the said Illinois Territory was erected into and became the State of Illinois, and a member of the Federal Union as such State, with boundaries defined in the act last aforesaid, which boundaries include the waters of Lake Michigan bordering upon the said State, as far as a line drawn north and south through the center of the said lake; and consequently the said State of Illi-
4 nois, having been admitted into this Union upon the same footing in all respects with the original States thereof, thereupon became

vested with the title and fee to and in the soil under the waters of the said lake within the boundaries aforesaid, the same being navigable waters, as an incident and concomitant of sovereignty and jurisdiction, but in trust to hold for the benefit of the people of the said State and Union, and not otherwise.

And the said district attorney on behalf of the said United States, further informing, shows unto your honors that the parcels of land described as the southwest fractional quarter of section ten, and fractional sections fifteen, twenty-two, twenty-seven, and thirty-four, in township thirty-nine north of range fourteen east, lying within the present limits of the city of Chicago, in the county of Cook and the State and district aforesaid, border upon the said Lake Michigan, in the order named, and form the shore thereof, from just north of the Chicago River southward a distance of about four miles and a half; the said lake being a navigable water of the said United States. And that the said city of Chicago is a municipality existing from and since about the twelfth day of August, A. D. 1833, first under the name of the town of Chicago, and afterwards and at this time under the name of the city of Chicago.

And the said district attorney, on behalf of the said United States, further informing, shows unto your honors, that before and on the seventh day of June, A. D. 1839, the said United States possessed and owned in fee simple the said southwest fractional quarter of section ten, the same being a reservation out of the public domain, called the Fort Dearborn Reservation; and the then Secretary of War having directed the said reservation to be sold, the same was thereupon by his authority laid off into blocks, lots, streets, alleys, and public ground, as an addition to the municipality aforesaid, called Fort Dearborn Addition to Chicago; and on the day last above mentioned a plat thereof was made and acknowledged by one Matthew Birchard, as agent and attorney of the said Secretary of War, and was thereupon duly recorded in the recorder's office of the said county of Cook; on which plat a part of the ground therein comprised, being all that part between the said lake on the east and blocks twelve and fifteen (as shown on the said plat) on the west, is designated as "public ground, forever to remain vacant of buildings," and there is a further declaration in these words, to wit, "the public ground between Randolph and Madison streets, and fronting upon Lake Michigan, is not to be occupied with buildings of any description;" as by the said plat, a true copy whereof, marked Exhibit A, is herewith filed and made part hereof, more fully and distinctly appears. And afterwards the several lots designated and shown on the said plat were sold and conveyed by the said United States to divers persons, by and according to the said plat and with reference to the same; but the said United States have never parted with the title to the streets, alleys, and public ground in the said plat designated and marked, and still own the same in fee simple, with the rights and privileges, riparian and otherwise, pertaining to such ownership, subject to the use and enjoyment of the same by the public.

And the said district attorney, on behalf of the said United States, further informing, shows unto your honors that under and by virtue of an act of Congress of the second day of March, A. D. 1827, granting to the said State of Illinois a quantity of land "for the purpose of aiding the said State in opening a canal to unite the waters of the Illinois River

with those of Lake Michigan" (as expressed in the same act),
6 certain parcels of the public domain were afterwards confirmed by the said United States to the said State of Illinois, among which was fractional section fifteen above mentioned; which parcels of land so confirmed were, according to the same act, to be subject to the disposal of the legislature of the said State of Illinois, for the purpose in that act expressed as aforesaid, and no other. And by an act of the general assembly of the said State of Illinois of the ninth day of January, A. D. 1836, the board of commissioners of the Illinois and Michigan Canal was authorized and required to lay off and subdivide the said fractional section fifteen into town lots, streets, and alleys, and to sell the same; and thereupon the said commissioners accordingly proceeded to and did lay off and subdivide that tract of land, or the greater part of the same, and make thereof an addition to the municipality aforesaid, commonly called and known as fractional section fifteen addition to Chicago; and on the thirteenth day of June, A. D. 1836, the said commissioners made and acknowledged, and caused to be recorded, a plat of the same addition, in substantial compliance with the statute of the said State of Illinois then in force in that regard (of which plat a true copy, marked Exhibit B, is herewith filed and made part hereof); by means whereof the fee of the streets and alleys in that addition became vested in the said municipality of Chicago, for the use of the public, with all the rights, riparian and otherwise, incident to such ownership; and afterwards the said commissioners from time to time sold and conveyed to divers persons, by and according to the same plat, all the lots in that addition. And the said district attorney, for the said United States, further says, referring to the plat last aforesaid, that the east part of the said fractional section fifteen, that is to say, the open space shown by the same plat to extend from a line of blocks eastward to the said lake, and not otherwise designated than as Michigan avenue, was either dedicated and set apart as a street by the said commissioners, by and through their plat aforesaid, in which case
7 the same became vested in the said municipality of Chicago, in like manner as other streets, or else that part of the said fractional section is land remaining unsubdivided and unappropriated to the use for which it was granted as aforesaid to the said State of Illinois, the same never having been sold or granted by the said commissioners, or otherwise by or under authority of the said State of Illinois; and, if the said east part of the said fractional section fifteen is such unappropriated land, then the same ought to be decreed to revert to the said United States, the purpose for which the same was so granted to the said State of Illinois having been long since fulfilled by the construction and completion of the Illinois and Michigan Canal.

And the said district attorney, on behalf of the said United States, further informing, shows unto your honors that by an act of Congress of the twentieth day of September, A. D. 1850, the said United States granted to the said State of Illinois the right of way through the public lands of the said United States for a railroad to be constructed from the southern terminus of the said Illinois and Michigan Canal to a point at or near the junction of the Ohio and Mississippi rivers, with a branch of the same to Chicago aforesaid, and also granted certain public lands in aid of the construction of such railroad; by which act it was provided that such right

of way should not exceed one hundred feet on each side of such railroad. And pursuant to and in view of this grant the general assembly of the said State of Illinois, by an act approved the tenth day of February, A. D. 1851, incorporated the Illinois Central Railroad Company, and granted to that corporation all the lands and privileges so granted to the said State of Illinois, for the construction of a railroad as aforesaid; by which act of assembly last aforesaid it was provided that the said corporation should have the right of way upon, and might appropriate to its sole use
8 and control, for the purposes of that act, land not exceeding two hundred feet in width through the entire length of its contemplated railroad, and might "enter upon and take possession of and use all and singular any lands, streams, and materials of every kind, for the location of depots and stopping-stages, for the purpose of constructing bridges, dams, embankments, excavations, station-grounds, spoil-banks, turn-outs, engine-houses, shops, and other buildings necessary for the construction, completing, altering, maintaining, preserving, and complete operation" of such railroad, all such lands, waters, and privileges as belonged to the said State of Illinois being by the same act granted to the said company, and any others not procurable by voluntary grant or release to be obtained by process of condemnation; and further that nothing in that act contained should authorize the said corporation to make location of its track within any city without the consent of the common council of such city. And afterwards, to wit, on the twenty-fourth day of March, 1851, the then governor of the said State of Illinois, for and on behalf of the same, by deed of that date, granted to the said Illinois Central Railroad Company the lands and rights in the same act mentioned. And afterwards, by an ordinance of the fourteenth day of June, A. D. 1852, the common council of the said city of Chicago gave permission to the said company to extend and build its railroad into the said city, northward from the then southern limit thereof, along the shore of the said lake, to such grounds as the said company might acquire between the north line of Randolph street in the said city and the Chicago River aforesaid, the said ordinance providing, amongst other things, that the said company might enter upon and use, for the purpose of its said railroad and works to protect the same from the said lake, a space three hundred feet wide, from near Twelfth street to the north line of Randolph street in the said city (that is to say, for the whole
9 length of the open space shown on the said plat of fractional section fifteen addition, and the whole length of the public ground shown on the said plat of Fort Dearborn addition), the interior or west line of such three-hundred-foot space to be four hundred feet east of and parallel with Michigan avenue in the said city; and the said company should construct suitable gates at the ends of streets which then were or thereafter might be laid out, in order to afford safe access to the said lake; and that, in case of the construction of an outer harbor at Chicago aforesaid, streets might be laid out to approach the same. And the said Illinois Central Railroad Company, in and about the said years 1851 and 1852, having accepted as well the said act of incorporation as the ordinance aforesaid, by virtue and under color of the same proceeded to and did build its said railroad, and extend and complete the same from the southward into the said city, on the course indicated in the said ordinance, to a terminus near the Chicago River aforesaid; and the said company has ever since maintained and

operated its said railroad and continues so to do. And the said district attorney, for the said United States, says that no authority or license was ever given by the said United States to the said company for building or maintaining or operating its said railroad upon or along the said open space shown on the said plat of fractional section fifteen addition, or the said public ground shown on the said plat of Fort Dearborn addition, or any part of those tracts of ground.

And the said district attorney, on behalf of the said United States, further informing shows unto your honors, that the railroad above mentioned, from a point near the said Chicago River southward a distance of three miles and more, is built and runs upon and along the shore of Lake Michigan aforesaid, passing over and along the fractional quarter section and sections above described. And further, that at the times of
10 the subdividing and platting of the said southwest fractional quarter of section ten and the said fractional section fifteen respectively as aforesaid, the shore line of those two tracts extended eastward at many points beyond the present way ground of the said railroad, and throughout beyond the west line of the said way ground; but at the time when the said railroad was so constructed, the shore line of the two tracts last mentioned, by the action of the waters of the said lake, had been abraded and washed away for a space of one hundred to two hundred feet in width, and therefore the said railroad, along and upon those two tracts, was built upon piles in the water; but a large part of the said space so lost, that is to say, all that part extending from Randolph street aforesaid to near Twelfth street aforesaid, and west of the said way-ground, has since been filled up by the said city of Chicago, and is now solid ground.

And the said district attorney, on behalf of the said United States, further informing shows unto your honors, that the said city of Chicago is and for many years has been a port of entry, duly established by law, and now has a population numbering about seven hundred thousand; and that long before the time of the incorporating of the said Illinois Central Railroad Company as aforesaid, the Government of the said United States, in order to promote the convenience of international and interstate commerce on the said lake, and the safety of shipping engaged in such commerce, had appropriated and expended large sums of money for and in the construction and maintenance of piers extending into the said lake at the mouth of the Chicago River aforesaid; and in the year 1870, for the same object, and in pursuance of a system devised and established by the War Department for harbor improvements at the said port and city, there was appropriated by Congress a large sum of money for making and constructing an outer harbor there, which money has been expended
11 by the said United States for that purpose; and Congress having since from time to time appropriated further large sums of money for the same object, the said United States have constructed breakwaters, of the aggregate length of about nine thousand feet, forming the northern, eastern and southeastern boundaries of such outer harbor of Chicago, which extends along the entire water side of the said southwest fractional quarter of section ten and fractional section fifteen, and about three thousand four hundred feet into the said lake; which said outer harbor is more clearly shown by a map, marked Exhibit C, filed with and made part of this information. And the said United States have control and supervision over

the said harbor and the constructions made and to be made in and about the same, and such control and supervision are necessary and proper in order to enable the said United States to regulate commerce by the waters of the said lake, with foreign nations and among the several States of this Union, to and from the said port and city of Chicago, and to preserve the said harbor and waters from obstructions to navigation, and keep them a free harbor and highway for all the citizens of the said United States to navigate, and pass and repass upon, with their vessels, at their will and pleasure.

And the said district attorney, on behalf of the said United States, further informing shows unto your honors that on the sixteenth day of April, A. D. 1869, the general assembly of the said State of Illinois passed, over the veto of the governor of that State, a certain pretended act, entitled "An act in relation to a portion of the submerged lands and lake park grounds lying on and adjacent to the shore of Lake Michigan, on the eastern frontage of the city of Chicago;" in and by which pretended act it was assumed and attempted (1st) to grant the right, title and interest of the said State of Illinois in and to so much of the said fractional section fifteen
12 as lies north of Park Row in the said city, south of Monroe street in the same, east of Michigan avenue aforesaid, and west of the way ground of the said Illinois Central Railroad, to the said city of Chicago, to be sold by the said city, and the proceeds of such sale to be applied to a park fund; and also (2d) to confirm to the said Illinois Central Railroad Company certain pretended riparian and other rights of that company in and to the lands, submerged or otherwise, lying east of a line running parallel with and four hundred feet east of the west line of Michigan avenue aforesaid, in the said sections ten and fifteen, and to grant in fee to the same company all the right and title of the said State of Illinois in and to the submerged lands constituting the bed of Lake Michigan aforesaid, and lying east of the tracks and breakwaters of the same company, for the distance of one mile into the said lake, the entire length of the said southwest fractional quarter of section ten, and the said fractional section fifteen, and the north part of the said fractional section twenty-two; and also (3d) to grant in fee to the said Illinois Central Railroad Company, the Chicago, Burlington & Quincy Railroad Company, and the Michigan Central Railroad Company, all the right and title of the said State of Illinois in and to the lands, submerged or otherwise, lying north of the south line of Monroe street aforesaid, and south of the south line of Randolph street aforesaid, and between the east line of Michigan avenue aforesaid and the track and way of the said Illinois Central Railroad, and being parts of the said sections ten and fifteen—the said pretended act purporting to grant the last-mentioned grounds for a passenger station and other railroad purposes, and providing that the said companies named as grantees should pay to the said city of Chicago the sum of eight hundred thousand dollars, to be likewise applied to such park fund.

And the said district attorney for the said United States further
13 shows that the said Illinois Central Railroad Company, Chicago, Burlington & Quincy Railroad Company, and Michigan Central Railroad Company now give out and claim that the said pretended act was and is a legal and binding act, and passed to them respectively a valid title to the property in and by the same attempted to be granted; and

the same companies now claim the right and threaten to take possession and exclusive control of the property so in and by the said pretended act attempted to be granted to them respectively: Whereas the said district attorney for the said United States charges that the said pretended act of the sixteenth day of April, A. D. 1869, is in violation of the constitution of the said State of Illinois, and is invalid and void, because it attempts to deprive owners of the said lake-shore in the said sections ten, fifteen, and twenty-two—among which owners are the said United States—of property without compensation and without due process of law; and because the said pretended act is private and local, and embraces more than one subject; and because the said pretended act is private and local, and the subject or main purpose thereof is not expressed in its title; and because the said general assembly of Illinois had no power to make the supposed grants, or any of them, or to convey the property, or any part thereof, in the said pretended act mentioned, or to transfer the title to the regality mentioned in the same; and because the several railroad corporations in the said pretended act named could not under their respective charters take or hold the supposed grants, or any of them, in the said pretended act specified. And further, that the said pretended act was afterwards expressly repealed by an act of the general assembly of the said State of Illinois, approved the 15th day of April, A. D. 1873; which said repealing act was passed and took effect before the said railroad companies or any of them had taken possession of, or done anything respecting, any rights or property attempted to be granted by the pretended act aforesaid.

14 And the said district attorney, on behalf of the said United States, further informing shows unto your honors that in or about the said year 1852 the said Illinois Central Railroad Company acquired possession of, and has ever since held, that part of the shore of the said lake lying between the said Chicago River on the north and Randolph street aforesaid on the south, and being a part of the said southwest fractional quarter of section ten; on which part of the said shore, at and after the time when the same company so acquired possession thereof, the waters of the said lake extended west beyond the outer or east line of the way-ground of the said Illinois Central Railroad, if the same should be extended directly north; and from time to time since so acquiring possession of that part of the said lake shore, the same company has without right or authority filled out and extended the same eastward into the said lake, by making wharves, piers, slips, and solid ground, to a distance of more than twenty-five hundred feet; and this area so reclaimed has been and is not only occupied and used by the said Illinois Central Railroad Company for its own tracks, station-houses, freight-houses, car-yards, and other structures and things pertaining to its business as a railroad company, but has been and is in great part occupied and used, under lease or license from that company, and for hire and profit to the same, by the said Michigan Central Railroad Company, the said Chicago, Burlington & Quincy Railroad Company, and the Baltimore & Ohio Railroad Company (corporations under those names respectively), and by divers other corporations and divers individual persons, for station-houses, freight-houses, elevators, warehouses, lumber-yards, saw-mills, and other things; and the same area has been and is occupied and used as well by the said Illinois Central

Railroad Company as by the other corporations and the individual persons last above named and mentioned, largely for purposes not connected with commerce by the waters of the said lake.

15 And the said district attorney, on behalf of the said United States, further informing shows unto your honors, that the said Illinois Central Railroad Company, without lawful right or authority, has built and now maintains a high bridge or viaduct of stone and iron on a line with Randolph street aforesaid, over the railroad tracks of that company, on a part of the said public ground shown and marked on the said plat of Fort Dearborn addition as "public ground, forever to remain vacant of buildings," and on land reclaimed from the water adjoining that part of the public ground aforesaid. And in or about the year 1855 the said Illinois Central Railroad Company, without any lawful right or authority whatever, but claiming to act under some pretended ordinance of the said City of Chicago, took possession of, and laid its tracks upon, a certain part of the said public ground shown on the said plat of Fort Dearborn addition, to wit, a triangular tract described as follows: Beginning on the north line of Randolph street, one hundred feet west of the way-ground of the Illinois Central Railroad thence east along that line to the way-ground aforesaid, thence south along the same two hundred feet, and thence northwesterly to the place of beginning. And in or about the year 1856 the said Illinois Central Railroad Company, without lawful right or authority, but claiming to act under some pretended ordinance of the said city, took possession of, and appropriated to its own use, a certain part of the lake-bed adjoining the said public ground shown on the said plat of Fort Dearborn addition, being a part described as follows: Beginning on the east line of the way-ground of the Illinois Central Railroad, seven hundred feet south of the north line of Randolph street extended eastward, thence north to that line, thence east about seven hundred and seventy-five feet, and thence southwesterly to the place of beginning. And in or about the year 1873 the said Illinois Central

16 Railroad Company, without lawful right or authority, but claiming to proceed under the pretended act of assembly above mentioned, of the sixteenth of April, A. D. 1869, took possession of, and appropriated to its own use, a certain part of the lake-bed adjoining partly the said public ground shown on the said plat of Fort Dearborn addition, and partly the said open space shown on the said plat of fractional section fifteen addition, that is to say, a part comprised within boundaries beginning on the east line of said way-ground of the said Illinois Central Railroad, fourteen hundred feet south of the north line of Randolph street aforesaid, and running thence north to the southerly point of the triangular tract last above described, thence along the easterly line thereof four hundred and fifty feet, and thence southerly to the place of beginning. And since taking possession of the three triangular tracts above described, the said Illinois Central Railroad Company has filled up the same with earth, and laid railroad tracks upon the same, and now holds and uses the same for its own purposes.

And the said district attorney, on behalf of the said United States, further informing shows unto your honors, that the said Illinois Central Railroad Company, at divers times since the construction of its said railroad as aforesaid, has entered upon , and attempted to take possession of, one hun-

dred feet in width of the lake-bed adjoining the said [illegible] said railroad on the east, along the said fractional [illegible] has attempted by piling and filling to extend its said road-bed into the said lake for the entire length of that tract, with the intention and purpose of using for its own business and ends the ground so made and to be made: And the same company has prepared plans for docks and wharves in front of the entire length of the said fractional section fifteen, and extending into the said lake a distance of twelve hundred feet from the east
17 line of the way-ground of the said Illinois Central Railroad; and the same company threatens to take possession of, and use and occupy, the whole of the said outer harbor of Chicago, and claims the right to widen its said road-bed one hundred feet as aforesaid, and the exclusive right to occupy and use the said outer harbor, and claims the absolute ownership of the same, under and by virtue of the said ordinance of the fourteenth day of June, A. D. 1852, and the said pretended act of assembly of the sixteenth day of April, A. D. 1869.

And further, that the said Illinois Central Railroad Company has driven piles, and filled out with earth and other materials, into the said lake, next east of the said way ground of its said railroad, between Park Row aforesaid and Sixteenth street in the said city (that is to say, adjoining a part of the said fractional section fifteen and a part of the said fractional section twenty-two), thereby covering and reclaiming an area of about twenty acres, and has converted this area into solid ground, and has erected thereon machine shops, roundhouses, and other buildings, and is now using and occupying this reclaimed ground for its own purposes, and for purposes not connected with commerce by the waters of the said lake. And the same company is now engaged in adding to the made ground last aforesaid, by filling out with earth into the said lake, and driving piles, and threatens greatly to extend the same eastward into the said lake and southward along the shore thereof, and pretends to and claims the right so to make ground, and to use the same for the purposes of a railroad, by reason of the same company's alleged ownership of the shore so extended and to be extended, and by virtue of the said pretended act of assembly of the sixteenth day of April, A. D. 1869. And the said Illinois Central Railroad Company has also made, and threatens to make, like unlawful appropriations and encroachments along and upon the shore of the said lake, south of the said fractional section fifteen, and on the said fractional sections twenty-two, twenty-seven, and thirty-four.

18 And the said district attorney, on behalf of the said United States, further informing shows unto your honors, that the said Illinois Central Railroad Company has permitted and does permit, for hire and profit, the said Michigan Central Railroad Company, Chicago, Burlington & Quincy Railroad Company and Baltimore & Ohio Railroad Company to use and occupy the tracks, way grounds, station grounds, and other grounds and like property possessed and claimed by the first-named company within the said city of Chicago, and the same are so used and occupied by the said Michigan Central Railroad Company, Chicago, Burlington & Quincy Railroad Company and Baltimore & Ohio Railroad Company; and the last-mentioned three companies enjoy a part of the benefit of, and profit by, the several wrongful appropriations and encroachments herein above set forth. And the same three companies pretend to and claim some rights

and interests in and to the parcels of land, way grounds, tracks, piers, wharves, slips, made ground, and constructions herein above described; the precise kinds and extent of which supposed rights and interests are to this informant unknown; and especially the said Michigan Central Railroad Company and Chicago, Burlington & Quincy Railroad Company pretend and claim to have some rights or interests in the premises by virtue of the said pretended act of assembly of the sixteenth day of April, A. D. 1869.

And the said district attorney, on behalf of the said United States, further informing shows unto your honors, that the said city of Chicago pretends and claims to hold the title to the said open space shown on the said plat of fractional section fifteen addition, and to have the right, as riparian owner, to build and make piers, wharves, and docks in the said outer harbor, along the same open space; and the said city also pretends to and claims some rights or interests in and to the said public
19 ground shown on the said plat of Fort Dearborn addition, of the precise nature of which supposed rights and interests this informant is not advised; but whatever title, rights, or interests the said city may have in the premises are subject and subservient to the superior rights of the said United States.

And the said district attorney for the said United States refers for greater certainty concerning the matters herein above alleged and shown to the map marked Exhibit C, above mentioned.

All which wrongful acts, doings, appropriations, claims, and pretenses above set forth are contrary to right, and tend to the injury of the said United States, and are respectively misappropriations of and encroachments upon, and unjust claims and pretenses concerning the said outer harbor of Chicago and navigable waters of the said United States, and their lands and property, and are clouds on their title to the same, and tend to hinder and obstruct the said United States in the regulation of commerce with foreign nations and among the several States of this Union, and to impair the rights of the said United States in the premises.

To the end, therefore, that the Illinois Central Railroad Company, the Michigan Central Railroad Company, the Chicago, Burlington & Quincy Railroad Company, the Baltimore & Ohio Railroad Company, and the city of Chicago, above named, which are made parties defendant hereto, may severally make full, distinct, and true answer to all and every the matters aforesaid (but not upon oath, the answer upon oath being hereby expressly waived), and may fully and particularly set forth and show their several claims, and their rights and interests, if any they have, in the premises; and that the ultimate title and property to and of the said public
20 ground shown on the said plat of Fort Dearborn addition, and the said open space shown on the said plat of fractional section fifteen addition, and the right of supervision and control over the harbor and navigable waters aforesaid, may be decreed to be in the said United States; and that the said pretended act of assembly of the sixteenth day of April, A. D. 1869, may be decreed to be invalid and void, and not to have passed or vested any rights or property to or in the several corporations therein named as grantees; and that the said several railroad companies and the said city of Chicago may be restrained by the order and injunction of this honorable court from exercising or attempting to exercise any right, power,

or control over any part of the waters or shores of the said lake [illegible] several parcels of land above described by virtue or under color of [illegible] said pretended act, or of any ordinance or license of the said city of Chicago; and that the said Illinois Central Railroad Company and its agents and servants may be in like manner restrained from making or constructing any piers, wharves, or docks, and from driving piles, building walls, or filling with earth or other materials, in the said lake, and especially in the said outer harbor, and from exercising any power or control over the waters of the lake and outer harbor aforesaid; and from using, or attempting to use or control, any made ground, or any piers, wharves, or other constructions made or built by or for the same company, in or about the said outer harbor, to the east of the two-hundred-foot strip of way ground of its said railroad, and from taking or exacting any toll or payment for the use or occupation of any such made ground, pier, wharf, or other construction; and that the said city of Chicago may be in like manner restrained from exercising any power or control over the said open ground shown on the said plat of Fort Dearborn addition, or the said open ground shown on the said plat of fractional section fifteen addition, or the
21 waters of the said lake and harbor, in contravention of the rights of the said United States; and that the said Illinois Central Railroad Company may be required by the order and decree of this honorable court within some short time to abate and remove all and every the obstructions by that company placed in the said outer harbor and lake, and to quit and yield possession of all land, waters and made ground by the same company taken and held without right as aforesaid; and that all clouds upon the title of the said United States to any of the parcels of land or waters above described may be removed; and that any and all rights, interests, and claims, as well of the parties defendant aforesaid as of the said United States, in the premises and matters aforesaid, may be by this honorable court adjudged and determined; and that the said United States may have such further and other relief as to your honors may seem meet and the circumstances of this case require.

May it please your honors to grant in this behalf not only a writ or writs of injunction, issuing out of and under the seal of this honorable court, and to be directed to the said Illinois Central Railroad Company, Michigan Central Railroad Company, Chicago, Burlington & Quincy Railroad Company, Baltimore & Ohio Railroad Company, and city of Chicago, to restrain them and every of them, their servants and agents respectively, as above is prayed in that behalf; but also a writ or writs of subpœna, to be directed to all the defendants aforesaid, commanding them and every of them, at a certain day to be therein named, to be and appear before this honorable court, then and there to make full and true answer to all and singular the premises, and further to perform and abide such order and decree therein as to your honors shall seem meet, etc.

WILLIAM G. EWING,
United States Attorney.

(Endorsed:) Filed June 22, 1887. Wm. H. Bradley, clerk.

(Here follow maps marked pp. 22, 23, and 24.)

25 On the same day to wit: On the twenty-second day of June 1887, there issued out of said clerk's office a writ of subpœna in

said entitled cause, which said writ together with the return of the marshal thereto attached are in the words and figures following, to wit:

26 *Chancery subpœna.*

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

The United States of America to the Illinois Central Railroad Company, the Michigan Central Railroad Company, the Chicago, Burlington and Quincy Railroad Company, the Baltimore & Ohio Railroad Company, and the city of Chicago, greeting:

We command you, and every of you, that you appear before our judges of our circuit court of the United States of America, for the northern district of Illinois, at Chicago, in the northern division of the said district, on the first Monday in the month of July next, to answer the information of our attorney for the district aforesaid, on our behalf, this day filed in the clerk's office of said court, in said city of Chicago, and then and there to receive and abide by such judgment and decree as shall then or thereafter be made upon pain of judgment being pronounced against you by default.

To the marshal of the northern district of Illinois to execute.

Witness, the Hon. Morrison R. Wait, Chief Justice of the Supreme Court of the United States of America, at Chicago aforesaid, this twenty-second day of June, in the year of our Lord one thousand eight hundred and eighty-seven and of our independence the 111th year.

[SEAL.] WM. H. BRADLEY, *Clerk.*

Memorandum.

The above-named defendants are notified that unless they and each of them shall enter their appearance in the clerk's office of said court
27 at Chicago, aforesaid, on or before the day to which the above writ is returnable on the next rule day thereafter, the complainants' information will be taken against them as confessed and a decree entered accordingly.

WM. H. BRADLEY, *Clerk.*

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

I certify that I have served the within writ upon the within-named defendants by personally delivering to each of them a true copy of the within writ.

Upon E. T. Jeffrey, general manager of the Illinois Central Railroad Company; upon O. W. Ruggles, ticket and passenger agent of the Michigan Central Railroad Company; upon Paul Morton, passenger agent of the Chicago, Burlington and Quincy Railroad Company, and upon John A. Roche, mayor of the city of Chicago, this 22nd day of June, A. D. 1887.

FREDERICK H. MARSH,
U. S. Marshal.

Marshal's fees:

5 services.....	$10.00
2 miles	.12
	10.12

(Endorsed:) Filed June 24, A. D. 1887. Wm. H. Bradley, clerk.

28 Afterward, to wit, on the twenty-fourth day of June, in the adjourned May term of said court, 1887, in the record of the proceedings thereof in said-entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

THE UNITED STATES OF AMERICA
vs.
ILLINOIS CENTRAL RAILROAD COMPANY et al. } In Chancery.

On the motion of the district attorney to make the Baltimore & Ohio & Chicago Railroad Company a party defendant in this cause, and to that end to amend the information herein by inserting in the same the name of that company next before the name of the Baltimore & Ohio Railroad Company (or next before the words "and the" or "and" or "the," next preceding the last mentioned name) wherever the same occurs, and by erasing the word "three" and inserting in lieu thereof the word "four" next before the word "companies," where the last-named word twice occurs on page 16 of the said information, it is ordered by the court that the said Baltimore & Ohio & Chicago Railroad Company be made such party defendant, and that the said information be and stand amended accordingly.

29 Afterward, to wit, on the second day of July, 1887, came the city of Chicago, by its solicitor, and filed in said clerk's office its appearance in said entitled cause, which said appearance is in the words and figures following, to wit:

Appearance of city of Chicago.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

In the United States circuit court in and for the northern district of Illinois. In chancery.

THE UNITED STATES OF AMERICA
vs.
THE CITY OF CHICAGO, IMPLEADED WITH THE Illinois Central Railroad Company et al. } Information.

I hereby enter the appearance of the defendant, the city of Chicago, in the above-entitled cause.

Solicitor for the Defendant, the City of Chicago.

(Endorsed:) Filed July 2, 1887. Wm. H. Bradley, clerk.
M. W. Fuller, sol. for city of Chicago.

Afterward, to wit, on the fifth day of July, 1887, came the Illinois Central Railroad Company, by its solicitor, and filed in said clerk's office

its appearance in said entitled cause, which said appearance is in the words and figures following, to wit:

30 UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

Of the July term, A. D. 1887.

THE UNITED STATES OF AMERICA, EX. REL., W. G. Ewing, Dist. Atty.,
vs.
ILLINOIS CENTRAL RAILROAD COMPANY, ET AL. } Information in chancery.

And now comes the Illinois Central Railroad Company, by John N. Jewett, its solicitor, and enters its appearance in the above-entitled cause.

JOHN N. JEWETT,
Solicitor for Defendant, Ill. C. R. R. Co.

(Endorsed:) Filed July 5, 1887, Wm. H. Bradley, clerk.

Afterward, to wit, on the sixth day of July, 1887, came the Chicago, Burlington and Quincy Railroad Company, by its solicitors, and filed in said clerk's office its appearance in said entitled cause, which said appearance is in the words and figures following, to wit:

31 UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

In the circuit court of the United States for the northern district of Illinois.

THE UNITED STATES OF AMERICA,
vs.
THE ILLINOIS CENTRAL RAILROAD COMPANY, The Michigan Central Railroad Company, The Chicago, Burlington and Quincy Railroad Company, et al. } Information.

We hereby enter the appearance of the Chicago, Burlington and Quincy Railroad Company, one of the defendants in the above-entitled cause.
Dated July 5th, 1887.

DEXTER, HERRICK AND ALLEN,
Attorneys for the Chicago, Burlington and Quincy Railroad Company, Defendant.

(Endorsed:) Filed July 6, 1887, Wm. H. Bradley, clerk.

Afterward, to wit, on the nineteenth day of July, 1887, came the Illinois Central Railroad Company and the Michigan Central Railroad Company, by their solicitors, and filed in said clerk's office their demurrer to

the information in said entitled cause, which said demurrer is in the words and figures following, to wit:

32 *Demurrer of Illinois Central R. R. Co. and Michigan Central R. R. Co. to information.*

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

In the circuit court of the United States for said district, July term, A. D. 1887.

THE UNITED STATES OF AMERICA,
vs.
THE ILLINOIS CENTRAL RAILROAD COMPANY et al. } Information.

The joint and several demurrer of the Illinois Central Railroad Company, the Michigan Central Railroad Company, two of the defendants in the said information, named to the information of the United States of America, on the relation of Wm. G. Ewing, esq., district attorney for the said United States.

These defendants, by protestation, not acknowledging or confessing all or any of the matters and things in the said information contained to be true in such manner and form as the same are therein set forth and alleged, do jointly and severally demur thereto, and for causes of demurrer these defendants show:

1st. That the said information does not make or state such a case as doth or ought to entitle the said United States of America to any such
33 relief, or to any relief as is thereby sought and prayed for from or against these defendants, or either of them.

2d. The said information does not state or show any right of interference on the part of the United States of America, either at law or in equity, respecting the matters in said information referred to, nor does it appear from said information that any constitutional right of the United States of America is infringed upon, or that such right will be infringed upon by any of the acts or contemplated acts of these defendants, or either of them.

3d. The said information does not allege or show any violation or contemplated or threatened violation of any legal or equitable right of the United States of America, by any or either of these defendants, and is, therefore, wholly insufficient as a basis for the relief prayed for.

Wherefore, and for divers other errors and imperfections appearing in the said information, these defendants, and each of them, pray the judgment of this honorable court whether they or either of them shall be compelled to make any other or further answer thereto.

ILLINOIS CENTRAL RAILROAD COMPANY,
By B. F. AYER,
Its Solicitor.

MICHIGAN CENTRAL RAILROAD COMPANY,
By F. S. WINSTON,
Its Solicitor.

JNO. N. JEWETT,
Of Counsel.

UNITED STATES OF AMERICA, STATE OF ILLINOIS,
Northern District of Illinois, County of Cook, ss:

34 Benjamin F. Ayer, being first duly sworn, deposes and says that he is the general solicitor of the Illinois Central Railroad Company, one of the defendants named in the foregoing demurrer, and that the said demurrer is not interposed to delay the cause or any proceedings therein.

B. F. AYER.

Subscribed and sworn to before me this 19th day of July, A. D. 1887.
[SEAL.] JOHN DUNN,
Notary Public.

I hereby certify that I am counsel for the defendants in the above-entitled cause, named in the foregoing demurrer to the information of the United States of America, filed therein, and that in my opinion the said demurrer to said information is well founded in point of law and proper to be filed in the said cause.

JNO N. JEWETT,
Of counsel for said defendants.

(Endorsed.) Filed July 19, 1887, Wm. H. Bradley, clerk.

On the same day, to wit, on the nineteenth day of July, 1887, came the Baltimore and Ohio and Chicago Railroad Company and the Baltimore and Ohio Railroad Company, by their solicitors, and filed in said clerk's office their answer to the information in said entitled cause; which said answer is in the words and figures following, to wit:

35 UNITED STATES OF AMERICA,
Northern District of Illinois, Northern Division, ss:

In the circuit court of the United States for the northern division of the northern district of Illinois.

The joint and separate answer of the Baltimore and Ohio and Chicago Railroad Company and the Baltimore and Ohio Railroad Company to the information filed against them and others in said court by the United States of America.

These respondents now and at all times hereafter saving and reserving to themselves all manner of benefit and advantage of exceptions which can or may be had or taken to the many errors of law and fact, uncertainties, and other imperfections in said information contained, and in no manner waiving the same, for answer to so much of said information as is material or necessary for them to make thereto, these respondents jointly and severally say that their claims, interest, right, and title in and to the said premises and the matters and things alleged in said information are substantially as follows, namely:

36 That on or about the 27th day of July, A. D. 1874, the respondent, the Baltimore and Ohio and Chicago Railroad Company, under its then name of the Baltimore, Pittsburg and Chicago Railway Company, Illi-

nois Division, and as the party of the second part, entered into and [illegible] the said Illinois Central Railroad Company, as the party of the first part, a certain contract in writing, that portion of which that is material to these proceedings being as follows:

Witnesseth that said party of the first part, for and in consideration of the covenants and agreements hereinafter expressed, has let and leased and does hereby let and lease unto the said party of the second part the right to run its cars, engines, and trains for the transaction of the business of the said party of the second part over that portion of the Illinois Central Railroad extending from the junction of the two roads at or near Hyde Park to the north line of Randolph street extended, in Chicago, for the passenger trains, and for freight trains, from said junction to the south line of the freight depot grounds, this day leased by the said party of the first part to the said party of the second part.

And the said party of the second part is to have the use of such tracks upon that part of the railroad of said party of the first part as may be agreed upon for running over its road the trains, cars, and engines of said party of the second part, under the rules and regulations of said
37 party of the first part, for and during the term of five years from the first day of November, 1874.

And the said party of the second part shall have the above-mentioned right to run its cars, engines, and trains under the obligations herein expressed in perpetuity, if within said term of five years it shall so elect, and shall also elect to lease the freight-station grounds hereinafter named of the first part in perpetuity, and shall notify said party of the first part of such election in writing, it being understood by the parties hereto that said freight cars shall be run after the expiration of said term of five years over the tracks of the Illinois Central Railroad only as far north as the south line of ground hereinafter to be leased to said party of the second part.

And the said party of the second part hereby covenants to and with the said party of the first part to pay monthly for and during the term of five years above mentioned, and for and during the extended term, if such election shall be made as above provided, for the right and use above mentioned upon all its traffic to and from Chicago, as follows.

That the other provisions of said contract relate principally to the rate to be paid upon its said traffic, and need not therefore be restated here.

38 Respondents further state that the respondent, the Baltimore and Ohio and Chicago Railway Company, under its aforesaid name, also at the same time entered into and made with said Illinois Central Railroad Company a lease of the same date as said contract, and being the lease referred to therein, the material portions of which said lease are substantially as follows:

Lease, made this twenty-seventh day of July, eighteen hundred and seventy-four, between the Illinois Central Railroad Company, of the one part, and the Baltimore, Pittsburg and Chicago Railway Company, Illinois Division, of the second part.

The party of the first part lease to the second party, from this date to the first day of November, eighteen hundred and seventy-nine, the following ground in the city of Chicago, Illinois, viz:

Commencing at a point seven hundred and four and a half (704½) feet north of the north line of Randolph street produced, and two hundred and forty (240) feet east of the center line of the east main track of the Illinois Central Railroad produced; thence south seven hundred and four and one-half (704½) feet; thence curving to the right one hundred and eighty (180) feet with a radius of one thousand (1,000) feet; thence curving to the left three hundred and seventy-six (376) feet, with a radius of two thousand seventy-eight and one-half (2,078½) feet; thence south parallel with the center line of said east main track produced to a point eight hundred (800) feet south of the north line of Randolph street produced, and one hundred and ninety (190) feet east of the center line of said east
39 main track produced; thence curving to the right two hundred and eighty-five (285) feet, with a radius of fourteen hundred and ninety-seven (1,497) feet; thence easterly at right angles to the last-described curved line fourteen (14) feet; thence northeasterly one hundred and eighteen (118) feet to a point two hundred and fourteen (214) feet east of the center line of said east main track produced; thence curving to the left one hundred and twenty-seven (127) feet, with a radius of six hundred and thirty-six (636) feet to a point two hundred and forty (240) feet east of the center line of said east main track produced, and eight hundred and fifty (850) feet south of the north line of Randolph street produced; thence northerly one thousand and sixteen (1,016) feet to a point three hundred and fifty-six (356) feet east of the center line of said east main track produced, and one hundred and sixty (160) feet north of the north line of Randolph street produced; thence curving to the left five hundred and forty-nine (549) feet, with a radius of sixteen hundred and ninety-one (1,691) feet, to a point three hundred and thirty-five (335) feet east of the center line of said east main track produced, and seven hundred and four and one-half (704½) feet north of the north line of Randolph street produced; thence west ninety-five (95) feet to the place of beginning, containing one hundred and fifty-six thousand square feet.

Also, a strip of ground twelve (12) feet in width extending six hundred (600) feet southerly from the south line of the above-described lot, as
40 shown on a plat hereto attached, for a freight station, upon which the second party may erect a freight house not to exceed six hundred (600) feet in length, and such other improvements as it requires.

In consideration of said leased ground the second party is to pay the first party, within fifteen days from the expiration of each month, during this lease, and any extension thereof, the sum of eighteen hundred and twenty dollars ($1,820), possession of said ground to be delivered to the party of the second part the first of September next.

Upon such possession being given rent is to commence.

It is agreed that at the expiration of this lease the first party will take the said freight house, then upon said ground, at its then value, to be ascertained by appraisal.

And the first party may at its option have the tracks and other improvements upon the ground at the expiration of said lease at an appraisal of their then value, said appraisals to be made by arbitrators, each party selecting one, and if they disagree they are to select an umpire.

If the first party does not elect to take said improvements [illegible] the freight house, the said second party may remove the same [illegible] expiration of this lease.

It is further expressly agreed between the parties hereto that if the second party elects to lease freight-station grounds in perpetuity of the first party, as specified in certain articles of agreement between said parties bearing date the twenty-seventh day of July, 1874, and shall give
41 notice to the first party as therein provided, then the first party agrees to extend this lease for a further term on the same conditions or furnish the second party a lease of other as suitable ground for freight business, upon terms to be agreed upon, until the first party delivers to the second party the possession of the ground so leased in perpetuity, or is prevented from so doing as specified in said articles of agreement.

Respondents further state that said contract and lease are still in full force and effect, and that the respondent, the Baltimore and Ohio and Chicago Railroad Company did duly build upon said demised premises the freight house, tracks, and other improvements provided for in said lease, and the respondents are now using and occupying the same and said demised premises under said lease and in connection with the running powers provided for in said contract.

Respondents further state that said lease and contract were and are in all respects legal and valid and that said Illinois Central Railroad Company had full right and authority to make the same, and had at the time the same were made and still has a good, clear, and perfect title to the premises mentioned and referred to in said lease and contract and free from any and all claims to or interest in the same on the part of the United States and of all other persons other than the aforesaid parties to said lease and contract, and any and all allegations in said information contrary thereto are denied by these respondents.

Respondents further state that the respondent, the Baltimore and Ohio and Chicago Railroad Company, did duly and seasonably elect to lease and did lease of said Illinois Central Railroad Company freight station
42 grounds in perpetuity, and also to run its cars, engines, and trains in perpetuity, as provided for and specified in said contract, and did give due notice thereof, and which said election was duly accepted by and was and is binding upon said Illinois Central Railroad Company; that the freight grounds so elected to be leased and so leased in perpetuity are described as follows, to wit:

Beginning at a stone set on the north line of Randolph street produced, at a point four hundred and forty-two and three-tenths (442 3-10) feet east of the east line produced of the Illinois Central and Michigan Central Railway Companies' joint passenger house, thence northerly making an angle of eighty-four degrees seven minutes (84° 7′) with the north line of Randolph street produced, to the east seven hundred and twenty-eight (728) feet, thence easterly at right angles to preceding course one hundred and eighty-seven and one-half (187 1-2) feet, thence southerly, parallel with first course, four hundred and thirty-six and seven-tenths (436 7-10) feet, thence deflecting to the west on a curve of fourteen hundred and ninety-five (1,495) feet radius, to which curve, the preceding course is a tangent four hundred and twenty-three and five-tenths (423 5-10) feet, thence on a tangent to said curve two hundred and ninety-four and five-

tenths (294 5-10) feet, thence easterly on a line making an angle of five degrees thirty-one and one-half minutes (5° 31 1-2′) with preceding course produced one hundred and ninety-two and three-tenths (192 3-10) feet, thence easterly on a line making an angle of one degree five min-
43 utes and thirty seconds (1° 5′ 30″) with preceding course produced five hundred and eighty-six and twenty-five one-hundredths (586 25-100 feet, thence westerly on a line making an angle of no degrees thirty-nine and one-half minutes (0° 39 1-2′) with preceding course two hundred and and thirty-nine (239) feet, thence westerly at right angles to preceding course twelve and twenty-five one-hundredths feet, thence northerly at right angles to preceding course two hundred and thirty-nine (239) feet, thence westerly on a curve of six hundred and thirty-one (631) feet radius, to which curve the preceding course is a tangent ninety-three (93) feet, to a point eighteen and one-tenth (18 1-10) feet distant from the eastern boundary line, measuring at right angles thereto, thence on a tangent to a last-mentioned curve sixty-six (66) feet to a point twenty-six and six-tenths (26 6-10) feet distant from the eastern boundary line, measuring at right angles thereto, thence northerly one hundred and forty-seven and two-tenths (147 2-10) feet to a point twenty-nine and two-tenths (29 2-10) feet distant from said eastern boundary line, measuring at right angles thereto, thence northerly, parallel with eastern boundary line, three hundred and nine and four-tenths (309 4-10) feet, thence westerly on a curve of eight hundred and eighty (880) feet radius, to which curve the preceding course is a tangent one hundred and fifty-four and four-tenths (154 4-10) feet, to a point on first course produced southerly, thence northerly on first course produced four hundred and twelve (412) feet to a
44 place of beginning, the land included by the above-described lines comprising an area of two hundred thousand eight hundred and three (200,803) square feet.

Respondents further state that said election to lease said grounds and run cars, engines, and trains in perpetuity was and is valid, and thereby the said respondent, the Baltimore and Ohio and Chicago Railroad company secured and acquired, and now owns and holds, all the rights, privileges, and benefits in respect to said last-described premises, and to running cars, engines, and trains in perpetuity, which are mentioned in and provided for, and secured by the terms and provisions of said lease and contract.

That the right and title of said Illinois railroad company in and to said premises so elected to be leased and so leased, in perpetuity, and the aforesaid granting of the right to said respondent to so run its cars, engines, and trains in perpetuity, was and is free and clear from any and all alleged claims to our interest in or objections to the same on the part of the United States, and of all other persons, and any and all allegations in said information contrary thereto are denied by these respondents.

Respondents further state that said lease of July 27, 1874, was by its terms extended until possession should be given of the grounds so elected to be leased and so leased in perpetuity, in case the election was made, and which was made as above alleged; that such possession has not yet been given, and the respondents are still in the rightful possession and occupation of said premises described in said lease of July 27th under the terms and provisions thereof.

Respondents further state that they are [illegible] station a narrow strip of ground [illegible]

45 Monroe street and the north line of the [illegible] ings, and the east line of said buildings and the west [illegible] said roadway of the Illinois Central Railroad Company, [illegible] virtue of an ordinance and lease from the city of Chicago, [illegible] spondents claim all the rights and privileges in respect to the [illegible] said ground and the removal of their improvements placed thereon, which are granted and conferred by said ordinance and lease; and they allege that the city of Chicago had the right to pass said ordinance and make said lease, and the same are legal and valid, and any allegations in said information contrary thereto are denied.

Having fully answered said information, these respondents pray to be hence dismissed, with their costs in this behalf sustained, and they have caused this their answer to be duly signed and their corporate seals to be affixed thereunto.

[SEAL.] BALTIMORE & OHIO AND CHICAGO RAILROAD CO.
By ORLAND SMITH, *President.*

Attest:
J. HOPE SUTOR, *Secretary.*

[SEAL.] BALTIMORE AND OHIO RAILROAD COMPANY.
By ROBERT GARRETT, *President.*

Attest:
W. H. IJAINS, *Secretary.*
C. C. CLARKE, *Counsel for Respondents.*

(Endorsed:) Filed July 19, 1887. Wm. H. Bradley, clerk.

46 Afterward, to wit, on the 29th day of July, 1887, came the complainant, by its solicitor, and filed in said clerk's office its replication to the answer of the Baltimore and Ohio R. R. Co. and the Baltimore and Ohio and Chicago R. R. Co. in said entitled cause, which said replication is in the words and figures following, to wit:

Replication to answer of B. & O. R. R. Co. and B. & O. & C. R. R. Co.

The replication of William G. Ewing, district attorney for the United States of America, to the joint and several answer of the Baltimore & Ohio Railroad Company and the Baltimore & Ohio & Chicago Railroad Company, defendants, to the information exhibited against them and others by the said district attorney on behalf of the said United States in the circuit court of the said United States for the northern district of Illinois, northern division.

This repliant, for the said United States, saving and reserving all advantage of exception to the said answer, for replication thereunto says that he, for the said United States, will aver and prove his said information to be true, certain, and sufficient in the law to be answered unto, and that the said answer is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied

unto, confessed and avoided, traversed or denied, is true, all which matterd and things this repliant, for the said United States, is and will be ready to aver and prove as this honorable court shall direct, and for the said United States he prays as in and by his said information he has already prayed.

W. G. EWING,
United States Attorney.

(Endorsed:) Filed July 29, 1887. Wm. H. Bradley, clerk.

47 Afterward, to wit, on the tenth day of August, 1887, came the Chicago, Burlington and Quincy R. R. Co., by its solicitors, and filed in said clerk's office its answer to the information in said entitled cause, which said answer is in the words and figures following, to wit:

Answer of Chicago, Burlington and Quincy Railroad Company.

United States circuit court, northern district of Illinois, northern division.

UNITED STATES OF AMERICA, *vs.* ILLINOIS CENTRAL RAILROAD COMPANY, Chicago, Burlington & Quincy Railroad Company, et al.	Information.

Several answer of the Chicago, Burlington and Quincy Railroad Company.

Now comes the Chicago, Burlington and Quincy Railroad Company, by Dexter, Herrick and Allen, its solicitors, and for answer to the information filed by the district attorney of the United States for said district, or so much thereof as defendant is advised it is material it should make answer unto as concerning this defendant, answering, says that it admits that on the 16th day of April, 1869, the general assembly of the State of Illinois passed an act entitled "An act in relation to a portion of the submerged lands and lake park grounds lying on and adjacent to the shore of Lake Michigan, on the eastern frontage of the city of Chicago," in and by which, among other things, there was a grant in fee to the Illinois Central Railroad Company, the Michigan Central Railroad Company, and this defendant of all the right and title of the State of Illinois in and to the lands, submerged or otherwise,

48 lying north of the south line of Monroe street, south of the south line of Randolph street, and between the east line of Michigan avenue and the track and way of said Illinois Central Railroad Company, all in the city of Chicago, being parts of sections ten and fifteen, for the purposes in said act specified, provided said companies should pay to the said city of Chicago the sum of eight hundred thousand dollars ($800,000).

Further answering, defendant says, that at the time of the passage of said act and thereafter, defendant and said other two companies jointly used and occupied terminal grounds adjacent to the property last described; that subsequent to the passage of said act and during the month of March, 1874, this defendant and said other two companies paid to the city of Chicago the sum of two hundred thousand dollars ($200,000), in part payment of the sum provided for in said act.

Defendant further says, that thereafter, as defendant was [illegible] cure sufficient additional land necessary for its terminal facilities [illegible] to that so occupied jointly with the above-named companies, said [illegible] ant removed its local terminus to another portion of the said city of Chicago, and defendant withdrew from the city of Chicago said sums so deposited, and abandoned its claims to the property in said act described and granted to said railroad companies, and now makes no claim thereto or under said act.

And now defendant having answered said information so far as it is concerned, prays to be hence dismissed with its costs.

CHICAGO, BURLINGTON, & QUINCY RAILROAD COMPANY,
By DEXTER, HERRICK, & ALLEN,
Its solicitors and of Counsel.

(Endorsed:) Filed August 10, 1887, Wm. H. Bradley, clerk.

49 Afterward to wit: On the 22nd day of May, 1889, came C. C. Clarke and filed in said clerk's office his withdrawal of appearance as solicitor for the Baltimore and Ohio R. R. Co., also at the same time came Jno. N. Jewett and Jewett Brothers, and filed their appearance as solictors for the B. and O. R. R. Co., in said entitled cause, which said withdrawal and appearance are in the words and figures following, to wit:

Withdrawal of Mr. Clarke and appearance of Jno. N. Jewett, & Jewett & Bros., for Baltimore and Ohio R. R. Co. et. al.

In the United States circuit court for the Northern District of Illinois.

THE UNITED STATES OF AMERICA
vs.
ILLINOIS CENTRAL RAILROAD COMPANY, MICHIGAN Central Railroad Company, Chicago, Burlington & Quincy Railroad Company, Baltimore & Ohio Railroad Company, Baltimore & Ohio & Chicago Railroad Company, and the city of Chicago.

I hereby withdraw my appearance as attorney for the Baltimore & Ohio Railroad Company and the Baltimore & Ohio & Chicago Railroad Company, defendants in the above entitled suit.

C. C. CLARKE.

CHICAGO, *May 20th*, 1889.

We hereby enter our appearance as attorney, for the Baltimore & Ohio Railroad Company, and the Baltimore & Ohio & Chicago Railroad Company, defendants in the above entitled suit.

Chicago, May 20, 1889.

JNO. N. JEWETT & JEWETT BROS.

(Endorsed): Filed May 22, 1889, Wm. H. Bradley, clerk.

50 Afterward, to wit: On the twenty-third day of August, in the July term of said court, 1890, in the record of the proceedings thereof in said entitled cause before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

THE UNITED STATES OF AMERICA *vs.* THE ILLINOIS CENTRAL RAILROAD COMPANY et al.	In chancery.

On motion of Thomas E. Milchrist, attorney for the United States, leave is granted to amend the information herein, such amendment to be filed with the clerk of the court instanter.

On the same day, to wit: On the twenty-third day of August, 1890, came the complainant by its solicitor and filed in said clerk's office its amendment to the information in said entitled cause, which said amendment is in the words and figures following, to wit:

51 *Amendment to information.*

United States of America, northern district of Illinois, northern division.

In the circuit court of the United States of America for the northern district of Illinois.

THE UNITED STATES OF AMERICA *vs.* THE ILLINOIS CENTRAL RAILROAD COMPANY, Michigan Central Railroad Company, Chicago, Burlington & Quincy Railroad Company, Baltimore & Ohio Railroad Company, Baltimore & Ohio & Chicago Railroad Company, and the city of Chicago.	Information.

Amendment to the information in this cause, made pursuant to an order of this court made on the twenty-third day of August, A. D. 1890. First, strike out the entire paragraph commeneing with the words "and the said district attorney," on the eighth page, and ending with the word "pleasure," on the ninth page of said information. Second, strike out all on page fourteen, after the word "fifteen," in the ninth line from the bottom of said page fourteen, and all on page fifteen of said information.

52 Third. Strike out the words "the said outer harbor of Chicago, and navigable waters of the said United States, and their lands and property, and are clouds on their title to the same, and tend to hinder and obstruct the said United States in the regulation of commerce with foreign nations and among the several States of the Union," in the fourteenth, fifteenth, sixteenth, seventeenth, eighteenth, and nineteenth lines of page seventeen, and insert in lieu thereof the following: "The lands and property of the United States, and are clouds on their title to the same."

Fourth. Strike out the words "and the right of supervision and control over the harbor and navigable waters aforesaid," in the third and fourth lines on the eighteenth page.

Fifth. Strike out the words "waters or shores of the said lake, or the" in the thirteenth and fourteenth lines on said eighteenth page.

Sixth. Strike out the words "and especially in the said outer harbor, and from exercising any power or control over the waters of the lake and outer harbor aforesaid," in the twentieth, twenty-first, twenty-second, and twenty-third lines of the said page eighteen.

Seventh. Strike out the words "in or about the said outer harbor," in the twenty-fifth and twenty-sixth lines on said page eighteen.

Eighth. Strike out the words "or the waters of the said lake and harbor," in the bottom line of said eighteenth page.

Ninth. Strike out the words "to abate and remove all and every the obstructions by that company placed in the said outer harbor and lake, and," in the fourth, fifth, and sixth lines of the nineteenth page of said information.

53 Tenth. Strike out the word "waters," in the sixth line, and the words "or waters," in the ninth line of said page nineteen of said information.

THOMAS E. MILCHRIST,
United States Attorney.

(Endorsed:) Filed Aug. 23, 1890. Wm. H. Bradley, clerk.

54 On the same day, to wit, on the twenty-third day of August, in the July term of said court, 1890, in the record of the proceedings thereof in said entitled cause before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Decree.

THE UNITED STATES OF AMERICA
v.
THE ILLINOIS CENTRAL RAILROAD COMPANY Michigan Central Railroad Company, Chicago, Burlington & Quincy Railroad Company, Baltimore & Ohio Railroad Company, Baltimore & Ohio & Chicago Railroad Company, and the City of Chicago. } In chancery.

On this twenty-third day of August, A. D. eighteen hundred and ninety, an amendment to the original information herein having been filed by leave of court, and the court having read the same, together with the demurrer filed herein and interposed to the said original information, and being advised in the premises, it is ordered, adjudged, and decreed that said demurrer be, and it is hereby, sustained to the said information as amended; and it is further ordered, adjudged, and decreed that said information as amended, be and the same is hereby, dismissed, without prejudice to the United States of America, however, to hereafter

55 institute any appropriate action or proceeding for the purpose of enforcing any rights they may have in the navigable waters of the lake or outer harbor at Chicago.

And thereupon the United States of America prays an appeal herein to the Supreme Court, which is allowed.

56 NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States for said northern district of Illinois, do hereby certify the above and foregoing to be a true and complete transcript of the record of all the proceedings had in said court in the cause wherein the United States of America are complainants and the Illinois Central Railroad Company, Michigan Central Railroad Company, Chicago, Burlington and Quincy Railroad Company, Baltimore and Ohio Railroad Company, Baltimore and Ohio and Chicago Railroad Company, and the City of Chicago are defendants, as the same appear from the records and files of said court now remaining in my custody and control.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at my office in Chicago in said district, northern division, this eighth day of September, 1890.

[SEAL.] WM. H. BRADLEY, *Clerk.*

(Indorsement on cover:) No. 587. The United States, appellant, vs. the Illinois Central Railroad Company et al. N. Illinois, C. C. U. S. Filed October 25, 1890. 14382. Supreme Court U. S., clerk's office. Received Oct. 25, 1890.

Circuit Court of the [illegible]

NORTHERN DISTRICT OF [illegible]

STATE OF ILLINOIS
vs.
ILLINOIS CENTRAL RAILROAD COMPANY.

CITY OF CHICAGO
vs.
ILLINOIS CENTRAL RAILROAD COMPANY.

UNITED STATES
vs.
ILLINOIS CENTRAL RAILROAD COMPANY.

OPINION OF MR. JUSTICE HA[illegible]

Circuit Court of the United States

NORTHERN DISTRICT OF ILLINOIS.

STATE OF ILLINOIS
vs.
ILLINOIS CENTRAL RAILROAD COMPANY.

CITY OF CHICAGO
vs.
ILLINOIS CENTRAL RAILROAD COMPANY.

UNITED STATES
vs.
ILLINOIS CENTRAL RAILROAD COMPANY.

OPINION OF MR. JUSTICE HARLAN.

HARLAN, J.:

The first of the above-named causes is a suit in equity in the name of the people of the State of Illinois against the Illinois Central Railroad Company, the city of Chicago, and the United States of America. It was commenced in the circuit court of Cook County, Ill., and subsequently, on the petition of the railroad company, was removed into this court. A motion to remand the cause was denied upon grounds indicated in *State* v. *Railroad Company*, 16 Fed. Rep., 705. The railroad company and the city filed answers, and the latter also filed a crossbill for affirmative relief against the State and its codefendants. To that crossbill the company filed an answer, as did also the attorney-general of Illinois in behalf of the State. The United States has not appeared, either in the original or cross suit. This cause may be regarded as under submission for final decree as between the State, the railroad company, and the city in the original suit; also as between the city and the railroad company in the cross suit. Notwithstanding the appearance in the cross suit of the attorney-general of Illinois in behalf of the State, some question is made as to the jurisdiction of the court to give to the city any affirmative relief against the State. But that question need not be decided, since all the issues between the State and the city can be finally determined in the original suit brought by the State. The last named of the causes is an information in equity by the United States against the Illinois Central Railroad Company, the Michigan Central Railroad Company, the Chicago, Burlington and Quincy Railroad Company, the Baltimore and Ohio Railroad Company,

and the city of Chicago. That case is now before us upon demurrer by the two first named companies to the information.

The general object of these suits is to obtain a judicial determination of the rights of the parties in respect to certain lands on the east or lake front of the city of Chicago, south of Chicago River, upon some of which are tracks, depots, warehouses, piers, and other structures erected by the Illinois Central Railroad Company; and also in respect to the submerged lands within the limits of the city of Chicago and of the State of Illinois, "constituting the bed of Lake Michigan, and lying east of the tracks and breakwater" of that company, "for the distance of 1 mile, and between the south line of the south pier [near Chicago River] extended eastwardly, and a line extended eastward from the south line of lot 21, south of and near the roundhouse and machine shops of said company." The cases, besides, involve an inquiry as to the right of the railroad company, for the promotion as well of its own business as of commerce and navigation generally, to erect and maintain wharves, piers, and docks in the harbor of Chicago. Some of these lands were formerly a part of what was known as "Fort Dearborn military post," or the southwest quarter of fractional section 10, near the mouth of Chicago River; others, a part of fractional section 15; while others are in section 22—all of said sections being in township 39 N., range 14 E. of the third principal meridian, and on the shore of Lake Michigan, in the order named. It is necessary to a clear understanding of the numerous questions presented for determination that we should first trace the history of the title to these several bodies of lands up to the time when the Illinois Central Railroad was located within the limits of Chicago.

1. *As to the lands embraced in the Fort Dearborn reservation.* In the year 1804 the United States established the military post of Fort Dearborn immediately south of Chicago River and near its mouth, upon the SW. fractional quarter of section 10. It was occupied by troops as well when Illinois, in 1818, was admitted into the Union as when Congress passed the act of March 3, 1819, authorizing the sale of certain military sites. By that act it was provided "that the Secretary of War be, and he is hereby, authorized, under the direction of the President of the United States, to cause to be sold such military sites, belonging to the United States, as may have been found or become useless for military purposes. And the Secretary of War is hereby authorized, on the payment of the consideration agreed for into the Treasury of the United States, to make, execute, and deliver all needful instruments conveying and transferring the same in fee; and the jurisdiction which had been specially ceded, for military purposes, to the United States by a State, over such site or sites, shall thereafter cease." (3 Stat., 520.) In 1824, upon the written request of the Secretary of War, the SW. quarter of fractional section 10, containing about 57 acres, and within which Fort Dearborn was situated, was

[illegible] reserved by the Commissioners of the [illegible] sale, and for military purposes. (Wilcox v. Jackson, 13 Pet., [illegible]).

The United States admit, and it is also proved, that the [illegible] served were subdivided in 1837, by authority of the Secretary [illegible] being represented by one Matthew Birchard as special agent and attorney for that purpose—into blocks, lots, streets, and public grounds, called the "Fort Dearborn addition to Chicago." And on the 7th day of June, 1839, a map or plat of that addition was acknowledged by Birchard as such agent and attorney, and was recorded in the proper local office. A part of the ground embraced in that subdivision was marked on the recorded plat, "Public ground, forever to remain vacant of buildings." The plat of that subdivision, called "Map A," is reproduced, and in the margin will be found the certificates which appear on the plat as made and recorded.*

* Fort Dearborn addition to Chicago, as represented on the adjacent plat, is laid out into blocks, lots, and streets upon, and embraces the whole of, the southwest fractional quarter of section ten (10), township thirty-nine (39) north, range No. fourteen (14) east of the 3d principal meridian. The largest figures on said plat indicate the number of the blocks. The next smaller figures, near the center of the lots, show the number of the lots, respectively, in each block. The next size of figures, still smaller, in the interior side of the boundary of the several streets, and on the division lines of the lots, represent the measurement of the respective lots in feet and inches. The figures written transversely to and in the streets and alleys show the width of the same in feet at different points, and the figures on the exterior lines of the blocks represent the measurement of the blocks upon which they stand. From the west boundary of the said fraction of section ten (10) is laid off and appropriated 60 feet in width, as an addition to State street; and from the south boundary of said section 40 feet as an addition to Madison street. The width of the rear of the water lots bounded upon the Chicago River is determined and established by posts set at the intersection of the lines of the lots and streets, with meanders of the river, as shown by the notes thereof entered upon the meander lines. The lines between the lots in block (2) are run at right angles to the N. W. line of River street. The public ground between Randolph and Madison streets, and fronting upon Lake Michigan, is not to be occupied with buildings of any description. At the S. E. corner of block (13) at the angle of Wabash and Washington streets is set a lime-stone, 4 by 6 inches, and 2 feet long, at least 18 inches below the natural surface of the ground; also another stone of similar description is set at the angle formed by the junction of River with South Water street, in block (3); and also one other stone of like dimensions at the N. E. corner of block (7), at the angle of South Water street and Michigan avenue. At the corner of sections 9, 10, 15, and 16, is a stone near the center of State street, which was set by the commissioners of the Illinois and Michigan canal in 1836. The bearing of South Water, Lake, Randolph, and Washington is N. 83° E. The bearing or course of Madison street is N. 82° E. The course of River street from South Water street to Harbor street is N. 29° E; thence to Lake Michigan, N. 83° E. Course of State and Wabash streets and Michigan avenue is N. 8° 5′ W. All bearings were taken without any variations of the compass.

For J. R. POINSETT, *Sec. at War.*
M. BIRCHARD, *Agent & Atty.*

STATE OF ILLINOIS, *Cook County:*

Be it remembered that on this seventh day of June, in the year of our Lord one thousand eight hundred and thirty-nine, before me, Henry Brown, a justice of the

The lots designated on this plat were sold and conveyed by the United States to different purchasers. The sale and conveyance (to use the words of the information filed by the United States) was "by and according to the said plat, and with reference to the same." But it should be stated that at the time of the first sales the United States expressly reserved from sale all of the Fort Dearborn addition (including the ground marked for streets) north of the south line of lot 8 in block 2, lots 4 and 9 in block 4, and lot 5 in block 5, projecting said lines across the adjacent streets. The grounds so specially reserved remained in the occupancy of the General Government for military purposes from 1839 until after 1845. The legal effect of that occupancy appears in *United States* v. *Chicago*, 7 How., 185. The city of Chicago having proposed, in 1844, to open Michigan avenue through the lands so reserved from sale, notwithstanding at the time they were in actual use for military purposes, the United States instituted a suit in equity to restrain the city from so doing. It appeared in the case that the agent of the General Government gave notice, at the time of selling the other lots, that the ground in actual use by the United States was not then to be sold. It also appeared that the act of March 4, 1837, incorporating the city of Chicago, and designating the district of country embraced within its limits, expressly excepted "the southwest fractional quarter of section 10, occupied as a military post, *until the same shall become private property.*" (Laws Ill. 1837, pp. 38, 74.) The court held that the city had no right to open streets through that part of the ground which, although laid out in lots and streets, had not been sold by the Government; that its corporate powers were limited to the part which, by sale, had become private property; and that the streets laid out and dedicated to public use by Birchard, the agent of the Secretary of War, did not, merely by his surveying the land into lots and streets, and making and recording a map or plat thereof, convey the legal estate in such streets to the city, and thereby authorize it to open them for public use, and assume full municipal control thereof. The court held to be untenable the claim of the city that "because streets had been laid down on the plan by the agent (Birchard), part of which extended into the land not sold, those parts had, by this alone, become dedicated as highways, and the United States had become estopped to object." Further: "It is

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peace in and for said county, came Matthew Birchard, solicitor of the general land-office and agent of the War Department of the United States, to me personally known, and exhibited a power of attorney from the Secretary of the Department of War of the United States, executed officially by said Secretary under the seal of said Department, by direction of the President of the United States, authorizing him, the said Matthew Birchard, to cause to be surveyed, platted, duly acknowledged, and recorded as an addition to the town of Chicago, Illinois, the southwest fractional quarter of section ten, heretofore reserved for military purposes, and the site of Fort Dearborn, and the same to sell, etc., and acknowledged the foregoing map to be the map and plat of the Fort Dearborn addition to the town of Chicago, and that the United States of America are the sole proprietors and the owners of the same.

HENRY BROWN, *Justice of the Peace.*

entirely unsupported by principle or precedent that an agent, [illegible] *by protracting on the plan* those streets into the reserved line, and amidst lands not sold, nor meant then to be sold, but expressly reserved, could deprive the United States of its title to real estate, and to its important public works." See, also, *Irwin* v. *Dixin*, 9 How., 31.

2. *As to the lands in controversy embraced in fractional section 15.* This section is on the lake shore, immediately south of section 10. The particular lands, the history of the title to which is to be now examined, are between the west line of the street now known as "Michigan avenue," and the roadway or way-ground of the Illinois Central Railroad Company, and between the middle line of Madison street and the middle line of Twelfth street, excluding what is known as "Park Row," or block 23, north of Twelfth street. By an act of the Illinois legislature of February 14, 1823, entitled "An act to provide for the improvement of the internal navigation of this State," certain persons were constituted commissioners to devise and report upon measures for connecting, by means of a canal and locks, the navigable waters of the Illinois River and Lake Michigan. (Laws Ill. 1823, p. 151.) This was followed by an act of Congress, approved March 2, 1827, entitled "An act to grant a quantity of land to the State of Illinois, for the purpose of aiding in opening a canal to connect the waters of the Illinois River with those of Lake Michigan," granting to this State, for the purposes of such enterprise, a quantity of land, equal to one-half of five sections in width, on each side of the proposed canal (reserving each alternate section to the United States), to be selected by the Commissioner of the General Land Office, under direction of the President; said lands to be "subject to the disposal of the said State for the purpose aforesaid, and for no other;" and said canal to remain forever a public highway for the use of the national Government, free from any charge for any property of the United States passing through it. (4 St. 534, c. 51.) The power of the State to dispose of these lands was further recognized or conferred by the third section of the act, as follows:

SEC. 3. That the said State, under the authority of the legislature thereof, after the selection shall have been so made, shall have power to sell and convey the whole or any part of the said land, and to give a title in fee simple therefor to whomsoever shall purchase the whole or any part thereof. (4 St. 234.)

By an act of the Illinois legislature of January 22, 1829, entitled "An act to provide for constructing the Illinois and Michigan Canal," the commissioners for whose appointment that act made provision were directed to select, in conjunction with the Commissioner of the General Land Office, the alternate sections of land granted by the act of Congress; such commissioners being invested with the power, among others, "to lay off such parts of said donation *into town lots as they may think proper*, and *to sell the same at public sale* in the same manner as is provided in this act for the sale of other lands." (Laws Ill. 1829.) The act of 1829 was amended February 15, 1831, so as to constitute

the canal commissioners a board, to be known as the "Board of Canal Commissioners of the Illinois and Michigan Canal," with authority to contract and be contracted with, sue and be sued, plead and be impleaded, and with power of control in all matters relating to said canal. (Laws Ill. 1830–31, p. 39.) Pursuant to and in conformity with said acts of Congress and of the legislature of Illinois, the selection of lands for the purposes specified was made by the proper authorities, and approved by the President on the 21st of May, 1830. Among the lands so selected was said fractional section 15. By an act of the Illinois legislature, approved January 9, 1836, entitled "An act for the construction of the Illinois and Michigan Canal," the governor was empowered to negotiate a loan of not exceeding $500,000, on the credit and faith of the State, as therein provided, for the purpose of aiding, in connection with such means as might be received from the United States, in the construction of the Illinois and Michigan Canal, for which loan should be issued certificates of stock, to be called the "Illinois and Michigan Canal Stock," signed by the auditor, and countersigned by the treasurer, bearing an interest not exceeding 6 per cent, payable semiannually, and "reimbursable" at the pleasure of the State at any time after 1860; and for the payment of which, principal and interest, the faith of the State was irrevocably pledged. The same act provided for the appointment of three commissioners, to constitute a board to be known as "The Board of Commissioners of the Illinois and Michigan Canal," and to be a body politic and corporate, with power to contract and be contracted with, sue and be sued, plead and be impleaded, in all matters and things relating to them as canal companies, and to have the immediate care and superintendence of the canal, and all matters relating thereto. (Laws Ill. 1836, p. 145.) That act contained, among other provisions, the following:

SEC. 32. The commissioners shall examine the whole canal route, and select such places thereon as may be eligible for town-sites, and cause the same to be laid off into town lots, and *they shall cause the canal lands in or near Chicago, suitable therefor, to be laid off into town lots.*

SEC. 33. And the said board of canal commissioners shall, on the 20th day of June next, proceed to sell the lots in the town of Chicago, and such parts of the lots in the town of Ottowa, *as also fractional section fifteen adjoining the town of Chicago, it being first laid off and subdivided into town lots, streets, and alleys*, as in their best judgment will best promote the interest of the said canal fund: provided always, that before any of the aforesaid town lots shall be offered for sale, public notice of such sale shall have been given. * * * (Laws Ill. 1836, p. 149.)

The revenue arising from the canal, and from any lands granted by the United States to the State for its construction, together with the net tolls thereof, were pledged by the act for the payment of the interest accruing on the said stock, and for the reimbursement of the principal of the same. (Laws Ill. 1836, p. 153.) In 1836, the canal commissioners, under the authority conferred upon them by the statutes above recited, caused fractional section 15 to be subdivided into lots, blocks, streets, etc., a map whereof was made, acknowledged, and recorded on the

20th of July, 1836. A map (the official certificates as they appear on the original map as recorded being in the margin*) is reproduced as "Map

STATE OF ILLINOIS,
Cook County, ss:

We, the undersigned, commissioners of the Illinois and Michigan Canal, in pursuance of the statute in such case made and provided, have caused fractional section number fifteen (15), township thirty-nine north, range fourteen east, adjoining or cornering with the original town of Chicago, to be laid off into lots, etc., as appears by the above plat. Planted stones as designated at different corners, from which to make future surveys. And we do hereby acknowledge the same the full width and length of the lots, and width of the streets and avenues, as marked, delineated, and laid down, as and for the true plat or map of the subdivision of said section.

Given under our hands and seals at Chicago, the thirteenth day of June, A. D. 1836.

[Signed] W. F. THORNTON. [SEAL.]
["] W. B. ARCHER. [SEAL.]
["] G. S. HUBBARD. [SEAL.]

RECORDER'S OFFICE,
Cook County, Illinois, ss:

I certify that the foregoing map of fractional section 15 was filed for record on the 18th day of June, 1836, and was duly recorded on the 20th day of July, 1836, in Book H, page 230.

[Signed] RICHARD J. HAMILTON,
Recorder Cook County, Illinois.

STATE OF ILLINOIS,
County of Cook, ss:

On this thirteenth day of June, in the year one thousand eight hundred and thirty-six, personally appeared before the undersigned, one of the justices of the supreme court of the State of Illinois, W. F. Thornton, W. B. Archer, and G. S. Hubbard, known to the undersigned to be the same persons who have signed and sealed this map, who severally acknowledged the same to be the true and original map of fractional section number fifteen, township thirty-nine north, range fourteen east of the third principal meridian, as surveyed and subdivided by them pursuant to law.

Given at Chicago the day and year before recited.

[Signed] THEOPHILUS W. SMITH.

I, Edward B. Talcott, assistant engineer in the employment of the board of commissioners of the Illinois and Michigan Canal, do hereby certify that the above is a correct plat or map of fractional section number fifteen, township thirty-nine north, range fourteen east of the third principal meridian, adjoining or cornering with the original town of Chicago, as subdivided and laid off into lots, etc., under the direction of said board of commissioners, and that the same portrays and sets forth the size, width, and length of the lots, also the true and fixed width of the streets and avenues. The letter "S" at the corners of the section and blocks, as marked, denotes where stones are planted deep in the ground, from which to make future surveys.

Given under my hand at Chicago, the 13th day of June, A. D. 1836.

[Signed] EDWARD B. TALCOTT, *Assistant Engineer.*

Filed June 18, 1836.

I, Robert Milne, secretary of the board of canal commissioners, certify that the above map or plat, with the certificates annexed of W. F. Thornton, W. B. Archer, and G. S. Hubbard, Edward B. Talcott, assistant engineer, Richard J. Hamilton, recorder, and Theophilus W. Smith, is a true copy of the original now in this office.

Witness my hand and the seal of the board of canal commissioners, this 19th day of February, A. D. 1873.

[Signed] ROBERT MILNE, *Secretary.*

CANAL OFFICE, *Lockport, Illinois, February 19, 1873.*

It is proper to say that upon some of the maps in evidence, and duly certified, the words "Michigan avenue" are nearer to the shore line than they appear to be on Map B. This fact tends to show that the entire space between the shore line and the lots into which fractional section 15 was subdivided was originally intended as an avenue, or public grounds or commons. At the time this map was made and recorded, fractional sections 15 and 10 were both within the limits of the "town" of Chicago, except that by the act of February 11, 1835, changing the corporate powers of that town, it was provided "that the authority of the board of trustees of the said town of Chicago shall not extend over the south fractional section 10 until the same shall cease to be occupied by the United States." (Laws Ill. 1835, p. 204.) But prior to the survey and recording of the plat of fractional section 10, to wit, by the act of March 4, 1837, the city of Chicago was incorporated, and its limits defined (excluding, as we have seen, "the southwest fractional quarter of section 10, occupied as a military post, until the same shall become private property"), and was invested with all the estate, real and personal, belonging to or held in trust by the trustees of the town; its common council being empowered to lay out, make, and assess streets, alleys, lanes, and highways in said city, to make wharves and slips at the end of the streets, on property belonging to said city, and to alter, widen, straighten, and discontinue the same. (Laws Ill. 1837, p. 61, § 38; Id., p. 74, § 61.)

This brings us, in the chronological order of events relating to this litigation, to the incorporation of the Illinois Central Railroad Company, and the location of its road within the limits of the city of Chicago. Congress having, by an act approved September 20, 1850 (9 St. 466, c. 61), made a grant of land to Illinois for the purpose of aiding the construction of a railroad from the southern terminus of the Illinois and Michigan Canal to a point at or near the junction of the Ohio and Mississippi rivers, with branches to Chicago and Dubuque, the Illinois Central Railroad Company was incorporated February 10, 1851, and made the agent of the State to construct that road. (Priv. Laws Ill. 1851, p. 61.) It was granted power by its charter "to survey, locate, construct, complete, alter, maintain, and operate a railroad, with one or more tracks or lines of rails, from the southern terminus of the Illinois and Michigan Canal to a point at the city of Cairo, with a branch of the same to the city of Chicago, on Lake Michigan; and also a branch, via the City of Galena, to a point on the Mississippi River opposite the town of Dubuque, in the State of Iowa." In addition to certain powers, privileges, immunities, and franchises—including the right to purchase, hold, and convey real and personal estate, which might be needful to carry into effect the purposes and objects of its charter—it was provided that the company "shall have the right of way upon, and may appropriate to its sole use and control, for the purposes contemplated herein, land not exceeding two hundred feet in width through its entire length; may enter upon, and take possession of, and use, all and singular, any lands, streams,

and materials of every kind for the location of depots and stopping stages, for the purposes of constructing bridges, dams, embankments, excavations, station grounds, spoil banks, turn-outs, engine houses, shops, and other buildings necessary for the construction, completing, altering, maintaining, preserving, and complete operation of said road. All such lands, waters, materials, and privileges *belonging to the State* are hereby granted to said corporation for said purposes: * * * provided, that nothing in this section contained shall be so construed as to authorize the said corporation to interrupt the navigation of said streams. (Section 3.) But the company's charter also provided (section 8): "*Nothing in this act contained shall authorize said corporation to make a location of their tract within any city without the consent of the common council of said city.*"

Such consent was given by an ordinance of the common council of Chicago, adopted June 14, 1852, whereby permission was granted to the company to lay down, construct, and maintain within the limits of that city, and along the margin of the lake within and adjacent to the same, a railroad with one or more tracks, and to have the right of way and all powers incident to and necessary therefor, upon certain terms and conditions, to wit: "The said road shall enter at or near the intersection of its southern boundary with Lake Michigan, and following the shore on or near the margin of said lake northerly to the southern bounds of the open space known as 'Lake Park,' in front of canal section fifteen, and continue northerly *across the open space in front of said section fifteen*, to such grounds as the said company may acquire between the north line of Randolph street and the Chicago River, in the Fort Dearborn addition in said city; upon which said grounds shall be located the depot of said railroad within the city, and such other buildings, slips, or apparatus as may be necessary and convenient for the business of said company. But it is expressly understood that the city of Chicago does not undertake to obtain for said company any right of way or other right, privilege, or easement not now in the power of said city to grant or confer, or to assume any liability or responsibility for the acts of said company." (Section 1.) By other sections of the ordinance it was provided as follows: By the second section, that the company might "enter upon and use in perpetuity for its said line of road, and other works necessary to protect the same from the lake, a width of 300 feet, from the southern boundary of said public ground near Twelfth street to the northern line of Randolph street; the inner or west line of the ground to be used by said company to be not less than 400 feet east from the west line of Michigan avenue and parallel thereto." By the third section, that they "may extend their works and fill out into the lake to a point in the southern pier not less than 400 feet west from the present east end of the same, thence parallel with Michigan avenue to the north line of Randolph street extended; but it is expressly understood that the common council does not grant

any right or privilege beyond the limits above specified, nor beyond the line that may be actually occupied by the works of said company." By the sixth section, that the company "shall erect and maintain on the western or inner line of the ground pointed out for its main track on the lake shore, as the same is hereinbefore defined, such suitable walls, fences, or other sufficient works as will prevent animals from straying upon or obstructing its tracks, and secure persons and property from danger; such structure to be of suitable materials and sightly appearance, and of such heights as the common council may direct, and no change thereon shall be made except by mutual consent: *Provided*, That the company shall construct such suitable gates at proper places at the ends of the streets, which are now or may hereafter be laid out, as may be required by the common council, to afford safe access to the lake: *And provided also*, That in case of the construction of an outside harbor, streets may be laid out to approach the same, in the manner provided by law; in which case the common council may regulate the speed of locomotives and trains across them." By the seventh section, that the company "shall erect and complete within three years after they shall have accepted this ordinance, and shall forever thereafter maintain, a continuous wall or structure of stone masonry, pier-work, or other sufficient material, of regular and sightly appearance, and not to exceed in height the general level of Michigan avenue opposite thereto, from the north side of Randolph street to the southern bound of Lake Park before mentioned, at a distance of not more than 300 feet east from and parallel with the western or inner line pointed out for said company, as specified in section 2 hereof, and shall continue said works to the southern boundary of the city, at such distance outside of the track of said road as may be expedient; which structure and works shall be of sufficient strength and magnitude to protect the entire front of said city, between the north line of Randolph street and its southern boundary, from further damage or injury from the action of the waters of Lake Michigan; and that part of the structure south of Lake Park shall be commenced and prosecuted with all reasonable dispatch after acceptance of this ordinance." By the eighth section, that the company "shall not in any manner, nor for any purpose whatever, occupy, use, or intrude upon the open ground known as 'Lake Park,' belonging to the city of Chicago, lying between Michigan avenue and the western or inner line before mentioned, except so far as the common council may consent, for the convenience of said company, while constructing or repairing works in front of said ground." By the ninth section, that the company "shall erect no buildings between the north line of Randoph street and the south line of said Lake Park, nor occupy nor use the works proposed to be constructed between these points, except for the passage of or for making up or distributing their trains, nor place upon any part of their works between said points any obstruction to the view of the lake from the shore, nor suffer their locomotives,

cars, or other articles to remain upon their tracks, but only erect such works as are proper for the construction of their necessary tracks and protection of the same." The company was given ninety days within which to accept the ordinance, and it was provided that, upon such acceptance, its terms should be embodied in a contract between the city and the company. The ordinance was accepted and the required agreement entered into on the 8th day of July, 1852.

At the time this ordinance was passed the harbor of the city included, under the laws of the State incorporating the city, "the piers and so much of Lake Michigan as lies within the distance of 1 mile thereof into the lake, and the Chicago River and its branches to their respective sources." (Laws Ill., 2d Sess., 1849 and 1851, pp. 132, 147.) Its common council had power, at the public expense, to construct a breakwater or barrier along the shore of the lake for the protection of the city against the encroachments of the water; "to preserve the harbor; to prevent any use of the same, or any act in relation thereto, * * * tending in any degree to fill up or obstruct the same; to prevent and punish the casting or depositing therein any earths, ashes, or other substance, filth, logs, or floating matter; to prevent and remove all obstructions therein, and to punish the authors thereof; to regulate and prescribe the mode and speed of entering and leaving the harbor, and of coming to and departing from the wharves and streets of the city by steam boats, canal boats, and other crafts and vessels; * * * and to regulate and prescribe by such ordinances, or through their harbor master, or other authorized officer, such a location of every canal boat, steamboat, or other craft or vessel or float, and such changes of station in and use of the harbor as may be necessary to promote order therein and the safety and equal convenience, as near as may be, of all such boats, vessels, crafts, or floats;" "to remove and prevent all obstructions in the waters which are public highways in said city, and to widen, straighten, and deepen the same;" and to "make wharves and slips at the end of streets, and alter, widen, contract, straighten, and discontinue the same." (*Id.*)

Under the authority of its charter and of the ordinance of June 14, 1852, the railroad company located its tracks within the corporate limits of the city. The tracks northward from Twelfth street were laid upon piling placed in the waters of the lake—the shore line, which was crooked, being at that time at Park Row, about 400 feet from the west line of Michigan avenue; at the foot of Monroe and Madison streets about 90 feet; and at Randolph street about 112½ feet. Since that time the space between the shore line and the tracks of the railroad company has been filled with earth by or under the direction of the city, and is now solid ground. After the construction of the track as just stated the railroad company erected a breakwater east of its roadway, upon a line parallel with the west line of Michigan avenue, and subsequently filled the space, or nearly all of it, between that breakwater and its tracks, and under its tracks, with earth and stone.

It is stated by counsel, and the record, we think, sufficiently shows, that when the road was located in 1852 nearly all of the lots bordering upon the lake *north of Randolph street* had become the property of individuals, by purchase from the United States, except a parcel adjacent to the river, which had not then been sold by the General Government. Soon thereafter the company acquired the title to all of the water lots in the Fort Dearborn addition north of Randolph street, including the remaining parcel belonging to the United States. The deed for the latter was made by the Secretary of War October 14, 1852, and included "all the accretions made, or to be made, by said lake and river in front of the land hereby conveyed, and all other rights and privileges appertaining to the United States as owners of said land." The company established its passenger house at the place designated in the ordinance of 1852, and, being the owner of said water lots north of Randolph street, it gradually pushed its works out into the shallow water of the lake to the exterior line specified in that ordinance, 1,376 feet east of the west line of Michigan avenue. In order that the railroad company might approach its passenger depot, the common council, by ordinance adopted September 10, 1855, granted it permission to curve its tracks westwardly of the line fixed by the ordinance of 1852, "so as to cross said line at a point not more than 200 feet south of Randolph street, extending and curving said tracks northwesterly as they approach the depot, and crossing the north line of Randolph street extended at a point not more than 100 feet west of the line fixed by the ordinance, in accordance with the map or plat thereof submitted by said company and placed on file for reference." This grant was, however, upon the following conditions: That the company lay out upon its own land, west of and alongside its passenger house, a street 50 feet wide, extending from Water street to Randolph street, and fill the same up its entire length within two years from the passage of said ordinance; that it should be restricted in the use of its tracts south of the north line of Randolph street, as provided in the ordinance of 1852; and "when the company shall fill up its said tracks south of the north line of that street, down to the point where said curves and side tracks commence, and the city shall grant its permission so to fill up its tracks, it should also fill up at the same time and to an equal height all the space between the track so filled up and the lake shore as it now exists, from the north side of Randolph street down to the point where said curves and side tracks intersect the line fixed by the ordinance aforesaid." The company's tracks were curved as permitted; the street referred to was opened, and has ever since been used by the public; and the required filling was done. It being necessary that the railroad company should have additional means of approaching and using its station grounds between Randolph street and the Chicago River, the city, by another ordinance adopted September 15, 1856, granted it permission "to enter and use in perpetuity, for its line of railroad and other works necessary to protect the same from the lake, the

space between its present [then] breakwater and a line drawn from a point on said breakwater 700 feet south of the north line of Randolph extended, and running thence on a straight line to the southeast corner of its present breakwater, thence to the river: *Provided, however*, and this permission is only given upon the express condition that the portion of said line which lies south of the north line of Randolph street extended shall be kept subject to all the conditions and restrictions, as to the use of the same as are imposed upon that part of said line by the said ordinance of June 14, 1852." In 1867 the company made a large slip just outside of the exterior line fixed by the ordinance of 1852, thereby extending its occupancy between Randolph street and Chicago River further to the east. Along the outer edge of this pier a continuous line of dock piling was placed, extending on a line from the river to the north line of Randolph street, 1,792 feet distant from the west line of Michigan avenue. This line formed the company's breakwater between the river and Randolph street at the time of the passage (April 16, 1869) of what is known as the "Lake-front act." In view of the important questions raised and of the rights asserted under that act it is here given in full:

An act in relation to a portion of the submerged lands and Lake Park grounds, lying on and adjacent to the shore of Lake Michigan, on the eastern frontage of the city of Chicago.

SECTION 1. Be it enacted by the people of the State of Illinois, represented in the general assembly, that all right, title, and interest of the State of Illinois in and to so much of fractional section 15, township thirty-nine, range fourteen east of the third principal meridian, in the city of Chicago, county of Cook, and State of Illinois, as is situated east of Michigan avenue and north of Park row, and south of the south line of Monroe street, and west of a line running parallel with and four hundred feet east of the west line of said Michigan avenue, being a strip of land four hundred feet in width, including said avenue, along the shore of Lake Michigan, and partially submerged by the waters of said lake, are hereby granted in fee to the said city of Chicago, with full power and authority to sell and convey all of said tract east of said avenue, leaving said avenue ninety feet in width, in such manner and upon such terms as the common council of said city may by ordinance provide: *Provided*, That no sale or conveyance of said property, or any part thereof, shall be valid unless the same be approved by a vote of not less than three-fourths of all the aldermen elect.

SEC. 2. The proceeds of the sale of any and all of said lands shall be set aside, and shall constitute a fund, to be designated as the "Park Fund" of the said city of Chicago, and said fund shall be equitably distributed by the common council between the south division, the west division, and the north division of the said city, upon the basis of the assessed value of the taxable real estate of each of said divisions, and shall be applied to the purchase and improvement in each of said divisions, or in the vicinity thereof, of a public park or parks, and for no other purpose whatsoever.

SEC. 3. The right of the Illinois Central Railroad Company under the grant from the State in its charter, which said grant constitutes a part of the consideration for which the said company pays to the State at least seven per cent of its gross earnings, and under and by virtue

of its appropriations, occupancy, use, and control, and the riparian ownership incident to such grant, appropriation, occupancy, use, and control, in and to the lands, submerged or otherwise, lying east of the said line, running parallel with and 400 feet east of the west line of Michigan avenue, in fractional sections ten and fifteen, township and range as aforesaid, is hereby confirmed; and all the right and title of the State of Illinois in and to the submerged lands constituting the bed of Lake Michigan, and lying east of the tracks and breakwater of the Illinois Central Railroad Company, for the distance of one mile, and between the south line of the south pier extended eastwardly and a line extended eastward from the south line of lot twenty-one, south of and near to the roundhouse and machine shops of said company, in the south division of the said city of Chicago, are hereby granted in fee to the said Illinois Central Railroad Company, its successors and assigns: provided, however, that the fee to said lands shall be held by said company in perpetuity, and that the said company shall not have power to grant, sell, or convey the fee to the same; and that all gross receipts from use, profits, leases, or otherwise of said lands, or the improvements thereon, or that may hereafter be made thereon, shall form a part of the gross proceeds, receipts, and income of the said Illinois Central Railroad Company, upon which said company shall forever pay into the State treasury, semiannually, the per centum provided for in its charter, in accordance with the requirements of said charter: and provided also, that nothing herein contained shall authorize obstructions to the Chicago harbor, or impair the public right of navigation; nor shall this act be construed to exempt the Illinois Central Railroad Company, its lessees or assigns, from any act of the general assembly which may be hereafter passed regulating the rates of wharfage and dockage to be charged in said harbor: and provided further, that any of the lands hereby granted to the Illinois Central Railroad Company, and the improvements now, or which may hereafter be, on the same, which shall hereafter be leased by said Illinois Central Railroad Company to any person or corporation, or which may hereafter be occupied by any person or corporation other than said Illinois Central Railroad Company, shall not, during the continuance of such leasehold estate or of such occupancy, be exempt from municipal or other taxation.

SEC. 4. All the right and title of the State of Illinois in and to the lands, submerged or otherwise, lying north of the south line of Monroe street, and south of the south line of Randolph street, and between the east line of Michigan avenue and the track and roadway of the Illinois Central Railroad Company, and constituting parts of fractional sections ten and fifteen in said township thirty-nine, as aforesaid, are hereby granted in fee to the Illinois Central Railroad Company, the Chicago, Burlington and Quincy Railroad Company, and the Michigan Central Railroad Company, their successors and assigns, for the erection thereon of a passenger depot, and for such other purposes as the business of said company may require: provided, that upon all gross receipts of the Illinois Central Railroad Company, from leases of its interest in said grounds, or improvements thereon, or other uses of the same, the per centum provided for in the charter of said company shall forever be paid in conformity with the requirements of said charter.

SEC. 5. In consideration of the grant to the said Illinois Central, Chicago, Burlington and Quincy, and Michigan Central Railroad companies of this land as aforesaid, said companies are hereby required to pay to said city of Chicago the sum of eight hundred thousand dollars,

to be paid in the following manner, viz: Two hundred thousand dollars within three months from and after the passage of this act; two hundred thousand dollars within six months from and after the passage of this act; two hundred thousand dollars within nine months from and after the passage of this act; two hundred thousand dollars within twelve months from and after the passage of this act, which said sums shall be placed in the park fund of the said city of Chicago, and shall be distributed in like manner as is hereinbefore provided for the distribution of the other funds which may be obtained by said city from the sale of the lands conveyed to it by this act.

SEC. 6. The common council of the said city of Chicago is hereby authorized and empowered to quitclaim and release to the said Illinois Central Railroad Company, the Chicago, Burlington and Quincy Railroad Company, and the Michigan Central Railroad Company any and all claim and interest in and upon any and all of said land south of the south line of Monroe street, as aforesaid, which the said city may have by virtue of any expenditures and improvements thereon or otherwise; and in case the said common council shall neglect or refuse thus to quitclaim and release to the said companies, as aforesaid, within four months from and after the passage of this act, then the said companies shall be discharged from all obligation to pay the balance remaining unpaid to said city.

SEC. 7. The grants to the Illinois Central Railroad Company contained in this act are hereby declared to be upon the express condition that said Illinois Central Railroad Company shall perpetually pay into the treasury of the State of Illinois the per centum on the gross or total proceeds, receipts, or income derived from said road and branches stipulated in its charter, and also the per centum on the gross receipts of said company reserved in this act.

SEC. 8. This act shall be a public act, and in force from and after its passage.

Passed, over veto, 16th April, 1869.

As early as May, 1869, the railroad company caused to be prepared a plan for an outer harbor at Chicago. On the 12th of July of the same year the Illinois Central Railroad Company, the Michigan Central Railroad Company, and the Chicago, Burlington and Quincy Railroad Company, by an agent, tendered to Walter Kimball, the comptroller of the city of Chicago, the sum of $200,000, as the first payment to the city under the fifth section of the act of 1869. He received the sum tendered upon the express condition that none of the city's rights be thereby waived, or its interest in any manner prejudiced, and placed the money in bank on special deposit, to await the action and direction of the common council. The matter being brought to the attention of that body, it adopted, June 13, 1870, a resolution declaring that the city "will not recognize the act of Walter Kimball in receiving said money as binding upon the city, and that the city will not receive any money from railroad companies under said act of the general assembly until forced to do so by the courts." The city never quitclaimed or released, nor offered to quitclaim or release, to said companies, or to either of them, any right, title, claim, or interest in or to any of the land described in the act of 1869, nor was Kimball's act in receiving the money ever recognized by

the city as binding upon it. On the expiration of his term of office, he did not turn the money over to his successor in office, but kept it deposited in bank to his own individual credit; and so kept it until some time during the year 1874, or later, when, upon application by the railroad companies, he returned it to them. No other money than the $200,000 delivered to Kimball was ever tendered by the railroad companies, or either of them, to the city or to any of its officers. At a meeting of the board of directors of the Illinois Central Railroad Company, held at the company's office in New York, July 6, 1870, a resolution was adopted to the effect "that this company accepts the grants under the act of the legislature at its last session, and that the president give notice thereof to the State, and that the company has commenced work upon the shore of the lake at Chicago under the grants referred to." On the 17th of November, 1870, its president communicated a copy of this resolution to the secretary of State of Illinois, and gave the notice therein required, adding: "You will please regard the above as an acceptance by this company of the above-mentioned law (lake front act), and it is desired by said company that said acceptance shall remain permanently on file and of record in your office." The secretary of state replied, under date of November 18, 1870: "Yours of the 17th instant, being a notice of the acceptance by the Illinois Central Railroad Company of the grants under an act of the legislature of Illinois, in force April 16, 1869, was this day received and filed, and duly recorded in the records of this office."

Following these transactions were certain proceedings, commenced about July 1, 1871, by information filed in this court by the United States against the Illinois Central Railroad Company. That information set forth that Congress, in order to promote the convenience and safety of vessels navigating Lake Michigan, had, from time to time, appropriated and expended large sums of money in and about the mouth of Chicago River, and had constructed two piers extending from the north and south banks of that river eastwardly for a considerable distance into the lake; that in July, 1870, it appropriated a large sum of money to construct an outer harbor at Chicago, in accordance with the plans of the engineer department of the United States; that the railroad company had, from time to time, wrongfully filled up with earth a portion of said lake within said harbor; that what the company had then done, in that way, and what it intended to do, unless prevented, would materially interfere with the execution of the plan of improvement adopted by the War Department. A temporary injunction was issued against the company. Subsequently, in 1872, the parties to that suit entered into a stipulation, from which it appears that the matters referred to in said information relating to the construction of docks and wharves in the basin or outer harbor of the city, formed by the breakwater then in process of erection by the United States, were referred to the War Department, and that the Secretary, upon the recommendation of engineer officers, approved cer-

tain lines limiting the construction of docks and wharves in said outer harbor, to wit: Commencing at the pier on the south side of the entrance to the Chicago River, 1,200 feet west of the Government breakwater; thence south to an intersection with the north line of Randolph street extended eastwardly; thence due west 800 feet; and thence south to the east and west breakwater proposed to be constructed by the United States, 4,000 feet south of the pier first above mentioned, the line so established being fixed as the line to which docks and wharves may be extended by parties entitled to construct them within said outer harbor. The railroad company desiring to proceed, under the supervision of the Engineer Bureau of the United States, with the construction of docks and wharves within the proposed outer harbor, between the pier on the south side of the entrance to Chicago River and the north line of Randolph street extended eastwardly, in conformity with the said limiting lines, and having agreed to observe said lines, as well as the directions which might be given in reference to the construction of said docks and wharves by the proper officers of said bureau, the injunctional order, pursuant to stipulation between the parties, was, January 16, 1872, vacated, and the information dismissed, with leave to the United States to reinstate the same upon the failure of the company, in good faith, to observe the said conditions. Subsequently the railroad company resumed work on, and during the year 1873 completed, pier No. 1, adjacent to the river, and east of the breakwater of 1869. On the 15th of April, 1873, the legislature of Illinois passed the following act, which was in force from and after July 1, 1873: "Section 1. *Be it enacted, etc.*, that the act entitled 'An act in relation to a portion of the submerged lands and Lake park grounds lying on and adjacent to the shore of Lake Michigan, on the eastern frontage of the city of Chicago,' in force April 16, 1869, be, and the same is hereby, repealed." In 1880 and 1881 piers Nos. 2 and 3, north of Randolph street, were constructed in conformity with plans submitted to and approved by the War Department. The common council of Chicago, by ordinance approved July 12, 1881, extended Randolph street eastwardly, and declared it to be a public street, from its then eastern terminus "to the west line of the right of way of the Illinois Central Railroad Company, as established by the ordinance of September 10, 1855, * * * and also straight eastwardly * * * from the easterly line of Slip C, produced southerly to Lake Michigan;" giving permission to the company to construct and maintain at its own expense, within the line of Randolph street so extended, and over the company's tracks and right of way, a bridge or viaduct, with suitable approaches, to be approved by the commissioners of public works, which should be forever free to the public, and to all persons having occasion to pass and repass thereon. Such a bridge or viaduct was necessary in order that the piers constructed, and in process of construction, east of the breakwater of 1869, might be conveniently reached by teams. The viaduct was built in 1881, and extends to the base of Pier 3. It has ever since

been used by the public. It appears from the evidence that, in 1882, the pier which was built in 1870 from Twelfth street to the north line extended of lot 21, was continued as far south as the center line of Sixteenth street. The main object of this extension, according to the showing made by the company, was to protect the tracks from the waves during storms from the northeast. Another object was to construct a slip or basin south of the south line of lot 21, between the breakwater and the shore, where vessels loaded with materials for the company, or having freight to be handled, could enter and be in safety. In 1885 a pier was constructed by the company at the foot of Thirteenth street, according to a plan submitted to the War Department; and the Department did not object to its construction, "provided no change be made in its location and length." The pier as constructed does not differ from that proposed and approved, except that it is wider by 50 feet. But it does not appear that the War Department regards that change in the plan as injurious to navigation, or as interfering with the plans of the Government for an outer harbor.

At the hearing a map was used for the purpose of showing the different works constructed by the United States; the location of all the structures and buildings erected by the railroad company, with the date of their erection; and the relation of the tracks and breakwaters of the company to the shore as it now is, and, to some extent, as it was heretofore. That map, known as the "Morehouse map" and called "C," is reproduced.

The State, in the original suit, asks a decree establishing and confirming her title to the bed of Lake Michigan, and her sole and exclusive right to develop the harbor of Chicago by the construction of docks, wharves, etc., as against the claim by the railroad company that it has an absolute title to said submerged lands, described in the act of 1869, and the right, subject to the paramount authority of the United States in respect to the regulation of commerce between the States, to fill the bed of the lake, for the purposes of its business, east of and adjoining the premises between the river and the north line of Randolph street, and also north of the south line of lot 21; and also the right, by constructing and maintaining wharves, docks, piers, etc., to improve the shore of the lake, for the purposes of its business, and for the promotion, generally, of commerce and navigation. The State, insisting that the company has, without right, erected, and proposes to continue to erect, wharves, piers, etc., upon the domain of the State, asks that such unlawful structures be directed to be removed and the company enjoined from constructing others. The city, by its cross bill, insists that since June 7, 1839, when the map of Fort Dearborn addition was recorded, it has had the control and use for public purposes of that part of section 10 which lies east of Michigan avenue and between Randolph street and fractional section 15; and that, as successor of the town of Chicago, it has had possession and control since June 13, 1836, when the map of

fractional section 15 addition was recorded, of the lands in that addition north of block 23. It asks a decree declaring that it is the owner in fee, and of the riparian rights thereunto appertaining, of all said lands, and has, under existing legislation, the exclusive right to develop the harbor of Chicago by the construction of docks, wharves, and levees, and to dispose of the same, by lease or otherwise, as authorized by law; and that the railroad company be enjoined from interfering with its said rights and ownership. The relief sought by the United States is a decree declaring the ultimate title and property in the "public ground" shown on the plat of the Fort Dearborn addition, south of Randolph street, and also in the open space shown on the plat of fractional section 15 addition, to be in the United States, with the right of supervision and control over the harbor and navigable waters aforesaid; that the railroad companies and the city be enjoined from exercising any right, power, or control over said grounds, or over the waters or shores of the lake; that the Illinois Central Railroad Company be restrained from making or constructing any piers, wharves, or docks, and from driving piles, building walls, or filling with earth or other materials in the said lake, or from using any made ground, or any piers, wharves, or other constructions made or built by or for it in or about the outer harbor, to the east of the 200-feet strip of its way-ground, or from taking or exacting any toll for such use; and that the Illinois Central Railroad Company be required to abate and remove all obstructions placed by it in said outer harbor and to quit possession of all lands, waters, and made ground taken and held by it without right as aforesaid. The State, the city, and the General Government all unite in contending that the lake-front act of 1869 is inoperative and void, for reasons that will be hereafter stated.

In disposing of the questions discussed by counsel it will be convenient to consider first those relating to the lands or grounds embraced in the Fort Dearborn addition to Chicago. It is apparent, from the facts stated, that whatever title the Illinois Central Railroad Company has to the water lots in that addition, between Randolph street and the Chicago River, is derived, as to some of them, directly, and, as to others, remotely, from the United States. It is, however, insisted, in behalf of the United States, that the subdivision and platting of Fort Dearborn reservation into blocks, lots, streets, and public grounds by Birchard was unauthorized by the act of 1819, under which alone he proceeded or could have proceeded. The point made is that upon the Secretary of War was conferred the power to dispose of military sites found to be useless, and that such power could not be delegated to or exercised by an agent, although especially appointed by him for that purpose. In this view the court does not concur. The direction in the act was that the Secretary "cause to be sold" such military sites as were useless—language implying that he might discharge the duty imposed by Congress through the agency of someone representing him. It certainly could not have been expected that he would visit Chicago and personally

superintend the sale. The plat shows upon its face, and the United States admit in their information, that Birchard acted in the premises for the Secretary of War, and only as his agent. It further appears that he acted under a power of attorney executed under the direction of the President

But it is contended that the power to cause these lands to be sold did not authorize the Secretary to dedicate a part of it to the public as streets and public grounds. And, in this connection, the district attorney maintains that the subdivision and platting by Birchard was not in conformity with the Illinois statute of February 27, 1833, for the recording of town plats. By the fifth section of that act the plat or map, when made out and certified, acknowledged, and recorded, as required by the statute, was to be deemed, as to every donation or grant to the public therein specified, a sufficient conveyance to vest in the city the fee simple of the lands so designated, and operated as a general warranty. It also declared that "the land intended to be for streets, alleys, ways, commons, or other public uses, in any town or city or addition thereto shall be held in the corporate name thereof, in trust to and for the uses and purposes set forth and expressed or intended." It is contended that the dedication of the streets and the public grounds south of Randolph street, on the lake shore, did not conform to the statute, and was at most a dedication at common law; in which event it is insisted, the fee to the streets and public grounds remains in the United States, notwithstanding the title must be held subject to the public uses by the platting and by the subsequent sales of lots with reference thereto. It seems to the court clear that the power given to the Secretary to sell—no particular mode for selling being prescribed—carried with it, by necessary implication, authority to adopt any mode that was not unreasonable, in view of the object to be accomplished, and that was customary in the case of lands within the limits of or near to a town or city. If a subdivision, in the mode ordinarily adopted in the locality, of a large tract, so situated, into blocks, lots, streets, and public grounds, was likely to be beneficial to the Government, it was the duty of the Secretary to adopt that mode of selling. If the subdivision and platting by Birchard was in conformity to the local statute in all material respects, then no conveyance by the United States of the legal title to the streets and public grounds was necessary. If it did not conform to the local law, and if the dedication of the streets and public grounds, shown on the map of Fort Dearborn addition, is to be deemed only valid as a dedication at common law, it would not follow that the United States can have a standing in court in respect to such streets and public grounds. The argument by the district attorney upon this point proceeds upon the ground that the General Government, after abandoning Fort Dearborn as a military site, and after having sold the whole of that reservation, except the parts reserved for streets and public grounds, had the capacity to hold the title to such streets and public grounds in trust for the public uses affixed to it. This position can not be maintained. The United

States took the right, title, and claim, as well of soil as of jurisdiction, which the Commonwealth of Virginia had in the Northwest Territory, for the purposes only of temporary government, and in trust for the performance of the stipulations and conditions imposed by the deed of cession. It was accepted as a common fund for the use and benefit of all the States, Virginia included. One of those conditions was that the territory so ceded should be laid out and formed into States, having the same rights of sovereignty, freedom, and independence as the other States. Consequently, when Illinois was admitted into the Union, "upon the same footing with the original States, in all respects whatever," she succeeded to all the rights of sovereignty, jurisdiction, and eminent domain which Virginia possessed at the date of the cession, "except so far as this right was diminished by the public lands remaining in the possession and under the control of the United States, for the temporary purposes provided for in the deed of cession, and of the legislative acts connected with it. Nothing remained to the United States, according to the terms of the agreement, but the public lands. And if an express stipulation had been inserted in the agreement, granting the municipal right of sovereignty and eminent domain to the United States, such stipulation would have been void and inoperative; because the United States have no constitutional capacity to exercise municipal jurisdiction, sovereignty, or eminent domain, within the limits of a State, except in the case in which it is expressly granted" (*Pollard's Lessee* v. *Hagan*, 3 How., 212, 223; *New Orleans* v. *United States*, 10 Pet., 662); or where it is necessary to the enjoyment of the powers conferred by the Constitution upon the General Government. (*Kohl* v. *United States*, 91 U. S., 367, 372; *United States* v. *Fox*, 94 U. S., 320; *United States* v. *Jones*, 109 U. S., 513, 519, 3 Sup. Ct. Rep., 346.) See, also, *Van Brocklin* v. *State of Tennessee*, 117 U. S., 151, 167, 168; 6 Sup. Ct. Rep., 670. When, therefore, Fort Dearborn reservation was subdivided into lots, and they were sold, with reference to the map or plat of such subdivision, and it was no longer used as a military site or for any purpose connected with the execution of the powers of the General Government, all the lands embraced within its limits ceased to be a part of the national domain. The title to the specific lots passed to those who purchased them, while jurisdiction over the streets and open grounds dedicated to public use passed from the United States; the title to and immediate possession and control of such streets and grounds vesting in the local government—that is, in the municipal corporation of Chicago—as a public agency of the State for the purposes for which such dedication was made. Touching the action of the Secretary of War and of his agent, Birchard, it may also be said that its validity was impliedly recognized in the case, already referred to, of *United States* v. *Chicago*. The question there was, as we have seen, whether the city had the right to open streets designated on the Birchard plat through that part of Fort Dearborn reservation which had not then been sold and was still used by the General Government as a military site. If the Birch-

ard subdivision was invalid, upon the ground that the Secretary could not invest him with power to do what he did, it would have been a ready answer, in that case, to the city's claim of authority to open Michigan avenue through Fort Dearborn reservation to the river, to say that Birchard's subdivision and platting, upon which the city relied, did not bind the United States. On the contrary, the decision proceeded upon the ground that the subdivision and platting was legal, although not done under the personal supervision of the Secretary of War; and that the right of the city to open Michigan avenue, as marked on the Birchard map, through that part of the reservation not then sold, would not come into existence until the occupancy of the United States ceased. Whatever doubt may remain upon this point is removed by the act passed by Congress August 1, 1854, for the relief of Jean Baptiste Beaubien, by which the Commissioner of the General Land Office was authorized to issue to him a patent or patents for certain specified "lots *as described and numbered on the survey and plat of the Fort Dearborn addition to Chicago, in the State of Illinois, made under the order of the Secretary of War, and now on file in the War Office.*" This statute is so far a recognition or ratification of the Birchard subdivision and of the acts of the Secretary of War as to preclude the United States and all others from making any question as to his power to make sale of Fort Dearborn reservation through the agency of Birchard, or as to the authority of the agent to subdivide these lands into blocks, lots, streets, and public grounds.

What has been said is sufficient to show that the United States have long since parted with all jurisdiction over or title to the lands embraced within that reservation, and that the Illinois Central Railroad Company, shortly after the location of its road within the corporate limits of Chicago, acquired a title in fee to all of the water lots on the lake shore within the Fort Dearborn addition *north of Randolph street.*

What rights did the railroad company have in virtue of such ownership? There can be no doubt that, upon her admission into the Union, the State of Illinois became the owner of and acquired jurisdiction over all the lands within her boundaries covered by the waters of Lake Michigan, subject only to such supervision and control of the use of such waters as might result from the exercise by Congress of its powers to regulate commerce with foreign nations and among the several States. (*Pollard's Lessee* v. *Hagan*, 3 How., 212; *Martin* v. *Wardell*, 16 Pet., 367; *Den* v. *Jersey Co.*, 15 How., 426; *Mumford* v. *Wardell*, 6 Wall., 436; *Weber* v. *Harbor Com'rs*, 18 Wall., 57; *County of St. Clair* v. *Livingston*, 23 Wall., 68; *Barney* v. *Keokuk*, 94 U. S., 339; *Van Brocklin* v. *State of Tennessee*, 117 U. S., 151, 167, 168; 6 Sup. Ct. Rep., 670.) Upon this ground both the State and the railroad company rest their respective claims. But it is insisted, and we think rightly, that, in the absence of any legislative or governmental direction as to the manner of the occupancy of the bed of the lake within the state, the railroad company, as the riparian owner of

the water lots north of Randolph street, had the right in virtue of such ownership, and as part of its purchase of such lots, to connect the shore-line by artificial constructions with outside waters that were navigable in fact; although the exercise of that right is at all times subject to such regulations—at least those not amounting to prohibition—as the State may establish. These principles find support in numerous cases. *Dutton* v. *Strong*, 1 Black, 24; *Railroad Co.* v. *Schurmier*, 7 Wall., 272; *Yates* v. *Milwaukee*, 10 Wall., 497; *Weber* v. *Harbor Commissioners*, 18 Wall., 57; *Atler* v. *Packet Co.*, 21 Wall., 389; *Delaplaine* v. *Railway Co.*, 42 Wis., 214; 1 Dill. Mun. Corp. §§ 70–77. In *Yates* v. *Milwaukee*, one of the questions was as to the rights of riparian owners of lots on Milwaukee River, near Lake Michigan, within the city of Milwaukee, with respect to wharves, piers, and other structures affecting the navigation of that river. The court said: "But, whether the title of the owner of such a lot extends beyond the dry land or not, he is certainly entitled to the rights of a riparian proprietor whose land is bounded by a navigable stream; and among those rights are access to the navigable part of the river from the front of his lot, the right to make a landing, wharf, or pier, for his own use, or for the use of the public, subject to such general rules and regulations as the legislature may see proper to interpose for the protection of the rights of the public, whatever those may be." Again: "This riparian right is property, and is valuable; and, though it must be enjoyed in due subjection to the rights of the public, it can not be arbitrarily or capriciously destroyed or impaired. It is a right of which, when once vested, the owner can only be deprived in accordance with established law, and if necessary that it be taken for the public good, upon due compensation." It is difficult to perceive any reason why these doctrines are not applicable to the Great Lakes of our country. It was in the exercise of these riparian rights, and with the consent of the city, that the railroad company, after the location of its road, and prior to 1867, pushed its works into the shallow water east of the shore line, north of Randolph street, until it reached the exterior line specified in the third section of the ordinance of 1852. Besides, the State—which, from the time of her admission into the Union, owned the bed of the lake thus occupied, and could lawfully permit it to be occupied for purposes not inconsistent with the public rights of navigation—had expressly authorized the railroad company to enter upon, take possession of, and use any lands, waters, or materials belonging to her for the location of its depots, station grounds, turn-outs, engine houses, shops, and other buildings that were necessary "for the construction, completing, altering, maintaining, preserving, and complete operation of said road," and that did not interrupt navigation. It is true that this power, in respect to lands, waters, and materials belonging to the State, within the corporate limits of a city, could not have been exerted by the company, under its charter, unless such city, by its common council, consented to the location of the road within its limits. But when such consent was given by the city of Chicago, upon the con-

ditions specified in the ordinance of 1852—conditions which it could lawfully impose—the right of the railroad company, so far as the State and city were concerned, to fill in the lake, to the extent prescribed by that ordinance, and to use the ground thereby made, was placed beyond question. As to the structures erected by the company east of the exterior line designated by the ordinance of 1852, those built in 1867 may be justified—apart from the confirmatory clauses of the act of 1869—under the power expressly given to enter upon, take possession of, and use (provided navigation was not thereby interrupted) any lands or waters of the State that were necessary for the complete operation of the road, for the purpose designated in the charter of the company. And as to the improvements made and structures built in 1873, 1880, 1881, north of Randolph street, they may be justified upon the same ground; and upon the further ground that they were recognized and permitted, if not directly approved, by the proper authorities of the United States, charged with the duty, by acts of Congress, of establishing an outer harbor of the city. So far as the United States are concerned, the court can not regard these structures, or any of them, as interfering in any degree with the plans adopted, or in contemplation, by the General Government in reference to the harbor of Chicago. (*Wisconsin* v. *Duluth*, 96 U. S., 379; *South Carolina* v. *Georgia*, 93 U. S., 4.) We would not be understood as saying that the State is concluded by the mere failure of the proper officers of the United States, at the time, to forbid the erection of these structures by the company. Nor does the court intend to question the power of the State, by legislation, to prescribe the lines beyond which piers, docks, wharves, and other structures—other than those erected under the authority, express or implied, of the General Government—may not be built, by riparian owners, in the waters of the harbor that are navigable in fact. All that we intend now to decide is that, under the showing made, no basis exists for a decree declaring to be illegal the structures heretofore erected by the company east of the exterior line fixed by the ordinance of 1852; such structures appearing, under the evidence, to have been required by the growing business of the company, and therefore necessary for the "complete operation of the road;" and it not appearing that such use of the waters of the lake interrupts navigation, or materially obstructs the use of the harbor by those engaged in commerce, or interferes with the plans devised by the United States for the improvement of that harbor. Whether a structure interrupts navigation—that is, interferes with the public rights of navigation—must depend upon the circumstances of each case. A structure might interrupt the navigation of a river, while one of like character erected in a great lake would not, in any just sense, impair the public right of navigation.

In respect to the company's right of way from Randolph street to the north line of block 23, the triangular pieces of ground south of Randolph street, and the structures erected by the company south of Park row, but

little need be said, in view of the conclusions already announced by the court. The right of way was located in the open waters of the lake. The State consented, in the charter of the company, that the bed of the lake might be used by the company for a right of way, provided the city assented to the location of the tracks within its limits. The city gave its consent by the ordinance of 1852. Nothing more is requisite to show that the tracks of the company were legally located on the line designated for a right of way. The use of such ground, in perpetuity, as a right of way simply, does not violate any right of the State, of the city, or of the United States. Upon the same grounds—the power given to the company in its charter to enter upon and use any land or waters belonging to the State for a right of way of a prescribed width, and for the location of depots, and for the purpose of constructing station grounds, turnouts, buildings, etc., necessary to the complete operation of its road, and the consent of the city, as manifested in the ordinances of 1855 and 1856—the occupancy of the two triangular pieces of ground south of Randolph street for the purposes of right of way must be sustained as legal. It would be waste of time to set out the evidence showing that these two pieces of ground are essential to the operation of the road. Without them, as the ordinances of 1855 and 1856 upon their face indicate, the trains of the company could not conveniently approach its passenger depot, freight yards, and piers.

What has been said upon this branch of the case is decisive of the question before the court in respect to the structures erected by the railroad company south of Park row and north of Sixteenth street. The company is shown to be the owner of all the water lots in front of which such structures have been made. The breakwater there constructed was, according to the evidence, necessary to protect the railroad from the waters of the lake; the old breakwater having become insufficient, under the ordinance of 1852, which, it must be remembered, required the shore to be protected by a continuous stone wall or structure of stone masonry, pier work, or other material, outside of the track of the road, as might be "expedient," and as would be of the strength and magnitude requisite to protect the entire front of the city between the north line of Randolph street and its southern boundary against further damage from the action of the waters of the lake. The part of the structure to be erected south of Lake Park was required by the ordinance to be commenced and prosecuted with all reasonable dispatch after the acceptance of the ordinance. While the new breakwater is further from the shore than the old one, it does not appear to materially obstruct the use of the navigable waters by the public. As to the large pier at the foot of Thirteenth street, it does not interfere with the public right of navigation. It is wider than was contemplated by the company at the time the plan therefor was submitted to the War Department. But such increase of width does not seem to be a matter of any consequence. According to the evidence, none of the structures

south of Park row interfere with the public use of the waters of the lake for purposes of commerce and navigation. Their erection may fairly be referred to the riparian ownership of the company and to its charter right to occupy and use the land and waters of the State for the purposes defined in its charter, provided, only, navigation is not interrupted; and, as their erection was not forbidden by regulations established under the authority of any statute, no ground is shown for the interference of the court. Whether the railroad company, in its erection of wharves, docks, piers, and other structures, has not gone as far as it may go without interrupting the navigation of the lake, or whether it could lawfully erect other structures on the lake without authority from the legislature of the State, are questions which the court is not now required to determine.

The questions next to be examined relate to the subdivision, in 1836, of fractional section 15 by the canal commissioners. We have seen that the canal commissioners had express legislative authority to make the subdivision, and to sell and convey the lots embraced in it. It was made in conformity, in all material respects, with the Illinois statute of 1833. That is substantially conceded on all hands. As the plat or map of the subdivision was made out, certified, acknowledged, and recorded as required by that act, the fee simple to the streets, alleys, ways, commons, or other public grounds vested by force of the statute, and without a formal conveyance, in the town of Chicago, in trust for the public uses affixed to them. (Section 5; *Canal Trustees* v. *Havens*, 11 Ill., 556; *Gebhart* v. *Reeves*, 75 Ill., 304; *City of Chicago* v. *Rumsey*, 87 Ill., 354; *Zinc Co.* v. *City of La Salle*, 117 Ill., 411 8 N. E. Rep., 81.) And to the estate, real and personal, vested in, or belonging to, or held in trust by, the trustees of the town, the city of Chicago succeeded, under the act of March 4, 1837. So that, when the lake front act of 1869 was passed, the fee was in the city of Chicago, subject to the public uses indicated, of all the then open ground south of the middle line of Madison street and north of Park row, and east of the west line of Michigan avenue. And so, also, is the fee in the city of the made or reclaimed ground between Randolph street and Park row, including the ground upon which rest the tracks and the breakwater constructed by the railroad company south of Randolph street. The grant to the city of power to establish "wharves and slips at the ends of the streets," was in aid of commerce and navigation, and was, by necessary implication, a grant of the lands upon which such wharves and slips might be established; such grant taking effect when structures of that kind were erected. (*Williams* v. *Mayor, etc.*, 11 N. E. Rep., 829.) And it necessarily implied authority to fill in the lake, for the purpose of such improvements, at least to the point of navigability. If the city had, before the passage of the ordinance of 1852, exerted the power thus conferred, it certainly would have become the owner of all the ground so reclaimed, for the purposes of wharves and slips, at the ends of streets. But the city also had the right, as riparian owner—its ownership of the

open ground east of Michigan avenue extending to the line of the water as it usually stood when free from disturbing causes (*Seaman* v. *Smith*, 24 Ill., 524)—to fill in the lake and erect walls to the extent necessary to protect its own and the property of its people from the violence of the waters of the lake; certainly, if it did not thereby interfere with the public rights of navigation. But, if that were not so, the city was expressly given power, by its charter, to erect a breakwater or barrier for protection against encroachment by the waters of the lake. If it had itself erected a breakwater, south of Randolph street, in front of fractional sections 10 and 15, on the precise line adopted by the railroad company under the ordinance of 1852, and filled in the space between the breakwater and the shore line, it could not be doubted that it would have become the owner of all the ground thus reclaimed and occupied. But, instead of doing that work itself, the city employed the railroad company to do it, in consideration of the grant to that company of the privilege of entering the city, and of laying its tracks in front of Lake Park grounds and of the open grounds south of Randolph street. When the railroad company established its breakwater, as it agreed with the city to do, and filled in the space set apart for the right of way, and when the space between the shore-line and the company's right of way was filled in by the city, we can not see but that the latter, as the riparian owner of the land upon the shore-line as it was before any of the filling was done, became also, with the consent of the State, the owner of the fee of all such reclaimed ground, including that occupied by the railroad tracks and the breakwater; such ownership being, however, subject to the use by the railroad company, according to the terms prescribed by the ordinance of 1852, in perpetuity, as a right of way, of the ground upon which its tracks were laid.

This brings us to the consideration of numerous questions arising out of the lake-front act of 1869. If that act contained no other provisions than those relating to the express grant to the Illinois Central Railroad Company of the submerged lands described in section 3, the first and principal question to be determined would be as to the validity of the repealing act of 1873. But, as will be seen, the former act did something more than grant the right and title of the State in the submerged lands constituting the bed of the lake within certain limits. It confirmed, by the third section, certain rights which the railroad company had previously acquired in other lands. As, in our judgment, the repeal of 1873, for reasons to be hereafter stated, did not abrogate all the provisions of the act of 1869, and as the opinion of the court seems to be desired upon all the points raised as to the latter act, we must first consider whether it be true, as asserted, that the act of 1869 was inoperative for every purpose and as to all of its provisions. Indeed it would, in our judgment, be premature, if not unseemly, to consider what was the scope or effect of the act of 1869, or inquire as to the validity of the act of 1873, without first examining the grounds upon which it is con-

tended that the act of 1869 never became, as to any of its provisions, a law of the State.

The constitution of that State, adopted in 1848 and in force in 1869, contained these provisions: "Each house shall keep a journal of its proceedings. The yeas and nays of the members on any question shall, at the desire of any two of them, be entered on the journals." (Art. 3, § 13.) "Bills may originate in either house, but may be altered, amended, or rejected by the other; and on the final passage of all bills the vote shall be by yeas and noes, and shall be entered on the journal; and no bill shall become a law without the concurrence of a majority of all the members in each house" (*Id.*, § 21.) "Every bill shall be read on three different days in each house, unless, in case of urgency, three-fourths of the house where such bill is so depending shall deem it expedient to dispense with this rule; and every bill, having passed both houses, shall be signed by the speakers of their respective houses; and no private or local law which may be passed by the general assembly shall embrace more than one subject, and that shall be expressed in the title." (*Id.*, § 23.) It is contended that the general assembly, in passing the lake-front act, did not meet these requirements, and consequently that the act never became a law. The claim is that the bill was not read on three different days in each house, and that its subject is not expresed in the title. The facts upon which this claim rests will now be stated.

On the 13th of January, 1869, a bill was introduced into the house entitled "An act to enable the city of Chicago to enlarge its harbor, and to grant and to cede all the rights, title, and interest of the State in and to certain lands of the State lying on and adjacent to the shore of Lake Michigan on the eastern frontage of said city." This bill expresses a desire that the harbor be enlarged and commerce and navigation on the lake promoted by the construction of docks, piers, breakwaters, and other works, according to such plans as might be made by the Secretary of War. To that end it granted and ceded to the city all the right, title, and interest of the State in and to the submerged lands constituting the bottom of Lake Michigan, lying on the eastern front of the city, for the space of one league eastwardly from the shore-line; such grant and cession being upon the express condition that the city should not, on any account, alien, sell, or convey the said lands, but hold them in trust forever for the uses and purposes above stated; with the privilege, however, of leasing the same for a period not exceeding ninety-nine years at any one time, upon the same terms as the school lands belonging to the city. The bill also granted and ceded to the city all the right, title, and interest of the State in and to the lands and grounds between the east line of Michigan avenue and the track of the Illinois Central Railroad, whether the same be submerged or not, constituting a part of sections 10 and 15, in township 39, range 14 E. of the third principal meridian, or lying or being adjacent thereto on the east. This grant was subject to various conditions,

among which were that the premises should not be conveyed or leased except upon the votes of three-fourths of the aldermen required to be elected, and that the city, at its election, might dedicate the whole or part of the premises for a public park. On the day of its introduction this bill was read a first time, and ordered to be read a second time. The same day "the rule was dispensed with," the bill read a second time and referred to a committee. On the 4th of February, 1869, the committee reported it back with amendments, recommending its passage as amended. The house adopted other amendments; and on the 10th of February, 1869, the report, as amended by the house, was adopted. On the same day the bill was ordered to be engrossed for a third reading. It was read a third time on the 20th of February and passed. On the same day, immediately after its passage, it was ordered by the house that the title be "A bill for 'An act in relation to a portion of the submerged lands and Lake Park grounds lying on and adjacent to the shore of Lake Michigan, on the eastern frontage of the city of Chicago.'" The fact of the passage of the bill in the house was communicated to the senate on the day of its passage, and two days thereafter it was taken up, read a first time, "ordered to a second reading," and laid on the table to be printed. On the 1st of March, 1869, the committee to which the bill had been previously referred reported it back with a recommendation in favor of its passage. The report "was concurred in, and the bill ordered to a third reading." The bill was read a third time and passed, with the foregoing title, on the 8th of March, 1869. It was vetoed by the governor, and on the 16th of April, 1869, passed each body, his objections to the contrary notwithstanding. It will be seen from this history of the act as it went through the legislature that nothing appears in the senate journal to show that the bill was in fact read a second time in that body. Is it essential to its validity that it should appear in the journal that the bill was "read on three different days in each house?" Does the mere silence of the senate journal as to whether the bill was in fact read a second time in that body, on some one of three different days, raise a conclusive presumption that it was not so read?

The earliest case in the supreme court of Illinois upon this general subject to which our attention has been called is *Spangler* v. *Jacoby* (14 Ill., 297). The court there said: "In our opinion, it is clearly competent to show from the journals of either branch of the legislature that a particular act was not passed in the mode prescribed by the constitution, and thus defeat its operation. The constitution requires each house to keep a journal, and declared that certain facts made essential to the passage of a law shall be stated therein. If those facts are not set forth the conclusion is that they did not transpire. The journal is made up under the immediate direction of the house and is presumed to contain a full and complete history of its proceedings. If a certain act receive the constitutional assent of the body, it will so appear on the face of the journal, and, when a contest arises as to whether an act was thus passed,

the journal may be appealed to to settle it. It is the evidence of the action of the house, and by it the act must stand or fall. It certainly was not the intention of the framers of the constitution that the signatures of the speakers and executive should furnish conclusive evidence of the passage of a law. The presumption, indeed, is that an act thus verified became a law pursuant to the requirements of the constitution; but that presumption may be overthrown. If the journal is lost or destroyed this presumption will sustain the law, for it will be contended that the proper entry was made in the journal; but when the journal is in existence and it fails to show that the act was passed in the mode prescribed by the constitution, the presumption is overcome and the act must fall." This decision is cited by counsel to support the proposition that the mere silence of the journal as to whether a bill was or not read on three different days—the journal not being lost or destroyed—is itself fatal to the validity of the act. But we are not satisfied that the court intended to express an opinion upon that precise point. Although it did not appear, in that case, that the bill was read the third time before it went to the senate, or that the ayes and noes were called, no special comment was made by the court upon the silence of the journal as to the bill not being read the third time. Plainly, its language had reference to the fact that the journal did not show the passage of the bill by ayes and noes. It was with reference to that fact that the language above quoted was used. In *Turley* v. *County of Logan* (17 Ill., 152) the court said that "the journals should show the readings and the passage of the law by a constitutional vote;" but nothing was said as to what would be the result where the journal did not show that each of the required readings was had. The general language above quoted seems to have been unnecessary to the decision, for the court finally sustained the validity of the act there in question, upon the ground that the same legislature, in extra session, caused its journals to be amended so as to show what, according to the minutes of the clerk of the house, was the fact—that the bill had been read the required number of times. That we do not misinterpret these decisions is shown in *Supervisors of Schuyler Co.* v. *People* (25 Ill., 181), where one of the grounds of objection to an act was that the senate journal did not show that the bill was read three times before it was put on its final passage. The court said: "The constitution does require that every bill shall be read three times in each branch of the general assembly before it shall be passed into a law; but the constitution does not say that these several readings *shall be entered on the journals*. Some acts performed in the passage of laws are required by the constitution to be entered on the journals in order to make them valid, and among these are the entries of the ayes and nays on the final passage of every bill; and we held in the case of *Spangler* v. *Jacoby* (14 Ill., 297) that, where the journal did not show *this*, the act never became a law. But where the constitution is silent as to whether a particular act which is required to be performed shall be entered on the journals, it is then left

to the discretion of either house to enter it or not; *and the silence of the journal on the subject ought not to be held to afford evidence that the act was not done.* In such a case we must presume it was done, unless the journal affirmatively shows that it was not done." This decision was expressly reaffirmed in *Railroad Co.* v. *Hughes* (38 Ill., 186). Nothing to the contrary was decided in *People* v. *Starne* (35 Ill., 141) or in *Ryan* v. *Lynch* (68 Ill., 161), which is relied upon as modifying or overruling *Supervisors of Schuyler Co.* v. *People.* The case in 35 Ill. recognizes the doctrine of the *Schuyler Co. Case*, and goes upon the ground that the ayes and noes were not called and spread upon the journals of the house on the passage of the bill. In *Ryan* v. *Lynch* it appeared from the journal that the bill was read twice in the senate; but the journal was silent as to a third reading, and did not show any call of the ayes and noes on the final passage of the bill. The decision was that as the proceedings in the senate, certified by the secretary of state, were competent proof of the facts therein stated, the failure of the journal to show a call of the ayes and noes was fatal to the bill. Nothing was said as to the effect to be given to the mere silence of the senate journal as to the third reading of the bill. Indeed, we do not find that any of the numerous decisions of the State court relating to the passage of bills by the legislature have modified or overruled the doctrine announced in *Supervisors of Schuyler Co.*, v. *People.* With that doctrine we are entirely satisfied. It is in harmony with the adjudications in many of the States whose constitutions have provisions similar to those in the constitution of Illinois which we have been considering. (*Miller* v. *State*, 3 Ohio St., 475; *McCulloch* v. *State*, 11 Ind., 424; *State* v. *City of Hastings*, 24 Minn., 78; *English* v. *Oliver*, 28 Ark., 317; *Chicot Co.* v. *Davies*, 40 Ark., 200; *State* v. *Francis*, 26 Kans., 724; *In re Vanderberg*, 28 Kans., 243; *State* v. *Mead*, 71 Mo., 268.) We therefore hold that the mere silence of the senate journal as to whether the act of 1869 was read the second time in that body does not justify us in holding it to be invalid.

The next inquiry under this head is whether the act of 1869 is a private or local law; if so, whether the title sufficiently expresses the subject thereof. In entering upon this inquiry we lay out of view the eighth section of the act declaring it to be a public act; for the mere declaration of the legislature that it was a public act would not make it such or preclude the determination of its character by the courts. (*Railroad Co.* v. *Gregory*, 15 Ill., 28.) On behalf of the railroad company it is contended that the word "private" is used as contradistinguished from "public," and "local" as contradistinguished from "general;" that the act in question is both public and general, because it concerns the interests of the public at large, contains a grant of the public domain of the State, provides for a revenue to be applied for State purposes only, and has in view the improvement of a harbor, in which object as well the people of Chicago as of the entire country and of foreign countries

are interested. We recognize the force of this argument. But, if it be sound it would follow that every act, or at least the great body of acts, referring in any way to municipal corporations, and to railroads constructed and maintained under legislative authority must be taken out of the prohibition against the passage of a private or local law whose subject is not expressed by its title; for all such acts may be said to relate to agencies employed by the State for the accomplishment of public purposes, and in which, in some sense, the people of the whole State are interested. Some light, we think, is thrown upon this question by the constitution of 1870, which does not contain any provision requiring the subject of a private or local law to be expressed in its title, but instead thereof prohibits the general assembly from passing "local or special laws" in certain enumerated cases, among which are laying out, opening, altering, and working roads or highways; vacating roads, town plats, streets, alleys, and public grounds; locating or changing county seats; regulating county and township affairs; regulating the practice in courts of justice; regulating the jurisdiction and duties of justices of the peace, police magistrates, and constables; providing for changes of venue in civil and criminal cases; incorporating cities, towns, or villages; providing for the management of common schools; the protection of game or fish, and chartering or licensing ferries or toll bridges. The word "local," as used in the constitution of 1870, evidently means what it did in that of 1848; and we are of opinion that laws relating to any of these subjects would have been deemed "local," within the meaning of the constitution of 1848, when, by their terms, they were to have only a local territorial operation. In many of the States the constitutional requirement is that every law, whether private or public, local or general, shall contain but one subject, which shall be expressed in the title. But the Illinois constitution of 1848 had in view only to guard against enactments of a private or local character, the subject whereof was not expressed in the title. If it were conceded, in this case, that the act of 1869 must, by reason of some of its provisions, be deemed a public act, within the rule requiring courts to take judicial notice of its contents (*Binkert* v. *Jansen*, 94 Ill., 290), the result would not follow for which counsel of the company contend; for the constitutional prohibition equally applies to legislation which is local in its character. In other words, an act may be of a public nature, and yet, by its terms, be local in its operation and immediate results. This act does not relate to the entire line of the railroad company within the State nor to all the municipal corporations existing under her authority, but, among other things, to specified property in a particular city. It contains provisions which concerned the people within that municipality far more than the people of any other locality in the State. Obviously the intention of the framers of the constitution was to protect local communities against enactments of the subjects whereof they had no previous notice from the titles used by the promoters of such

legislation. An act is local which specially concerns the property and rights of a portion of the people of the State, although its subject may be of a public nature, and although in its general operation the people of the entire State may, in some sense, have an interest. It is none the less a local act within the meaning of the constitution because some of its provisions, if embodied in a separate statute, might have made that statute a general law. As we shall see further along, the city of Chicago had, when the act of 1869 was passed, certain property rights in lands within its corporate limits. In that property no other municipal corporation of the State had any direct interest. Of some of that property the act required the city to make sale to particular corporations at a named price. If such an act be not local it is difficult to conceive of one that would be of that character within the meaning of the constitution.

The rules to guide us in solving the question whether the subject of an act is sufficiently expressed seem to be well established by numerous decisions of the supreme court of Illinois. In *Railroad Co.* v. *Gregory* (15 Ill., 20) it was said that the provision of the constitution must receive "a fair and reasonable construction—one which will repress the evil designed to be guarded against, but which at the same time will not render it oppressive or impracticable." In *City of Ottawa* v. *People* (48 Ill., 233) that, while the subject must be expressed, "the adjuncts to that subject, or the *modus operandi*, need not be." In *Binz* v. *Weber* (81 Ill., 288) that the question whether an act contains more than one subject is to be determined by the controlling purpose of the law, not by the various provisions made for carrying that purpose into effect. In *Johnson* v. *People* (83 Ill., 431) that the constitution "does not require that the subject of the bill must be specifically and exactly expressed in the bill; hence we conclude that any expression in the title which calls attention to the subject of a bill, although in general terms, is all that is required." In *Blake* v. *People*, 109 Ill., 504, that the clause of the constitution under consideration has uniformly been "construed liberally in favor of the validity of enactments; and the fact that many things of a diverse nature are authorized or required to be done is unimportant, providing the doing of them may fairly be regarded as in furtherance of the general subject of the enactment." And in *Mix* v. *Railroad Co.*, 116 Ill., 502, 6 N. E. Rep., 42, that "it is sufficient that the act is fairly covered by its title. The constitution does not require that all the legal effects of an act, such as repeals by implication, should be expressly stated in the title. Such a thing would be utterly impracticable. The general rule is illustrated in numerous cases in the State court, to some of which it will be well to refer. In *Railroad Co.* v. *Gregory*, 15 Ill., 20, "An act to incorporate the Belleville and Illinoistown Railroad Company" was held to contain but one subject, although one of its provisions conferred upon a named city and county authority to subscribe to the stock of the company, and although another section authorized the company to unite

with any other railroad then or thereafter to be constructed in the State. So was "An act to incorporate the Firemen's Benevolent Association, and for other purposes," which contained a provision requiring the agents of all foreign insurance companies doing business in Chicago to pay to the association 2 per cent on the amount of all premiums received by such agents. *Association* v. *Lounsbury*, 21 Ill., 511. In *O'Leary* v. *County of Cook*, 28 Ill., 534, "An act to amend an act entitled 'An act to incorporate the Northwestern University,'" which contained a prohibition upon the sale of ardent spirits within a distance of four miles of the university, was sustained; the court observing that "it is not the purpose of the constitution to deprive the legislature of any power necessary to enable them to make private legislation ample and abundant to accomplish its legitimate purpose, but the object was to prevent them from covertly embracing several distinct and foreign subjects in one act." In *Neiffing* v. *Town of Pontiac*, 56 Ill., 172, "An act to extend the corporate powers of the town of Pontiac" was sustained, as embracing one subject, although it contained provisions both extending and restricting such corporate powers. "An act to amend the charter of the city of Chicago" was held, in *Prescott* v. *City of Chicago*, 60 Ill., 121, to sufficiently cover, by its title, provisions extending the limits of the city, and providing for the improvement and regulation of certain parks. In *People* v. *Hydraulic Co.*, 115 Ill., 281, 3 N. E. Rep., 413, an act passed in 1853 was sustained as embracing one subject; the title being "An act to amend an act incorporating the Hydraulic Company and the Lasalle County Manufacturing Company of Ottawa, both incorporated under the general law approved February 10, 1849." The court said: "The subject of the act of 1853, therefore, was the amendment of the act of 1849, or of the act incorporating these two companies; and the additional powers conferred on the two companies were clearly germane to the amendment of the charter. It can hardly be that this objection is founded on the fact that the legislature has, by a single act, conferred certain powers and privileges on two distinct corporate bodies. It would be just as reasonable to say that the legislature, by reason of the constitutional provision in question, could not make a joint grant to two separate persons; and no one, we presume, would contend that for a moment." The decisions of the Supreme Court of the United States, interpreting the constitution of Illinois, and construing the constitutions of other States having provisions similar to those found in the constitution of Illinois of 1848, are to the same effect. (*Woodson* v. *Murdock*, 22 Wall., 351, 373; *San Antonio* v. *Mehaffy*, 96 U. S., 315; *Unity* v. *Burrage*, 103 U. S., 447; *Louisiana* v. *Pilsbury*, 105 U. S., 278, 289; *Montclair* v. *Ramsdell*, 107 U. S., 147, 153, 155, 2 Sup. Ct. Rep., 391; *Jonesboro City* v. *Railroad Co.*, 110 U. S., 192, 199, 200, 4 Sup. Ct. Rep., 67; *Otoe Co.* v. *Baldwin*, 111 U. S., 1, 4 Sup. Ct. Rep., 265; *School Dist.* v. *Hall*, 113 U. S., 135, 5 Sup. Ct. Rep., 371; *Mahomet* v. *Quackenbush*, 117 U. S., 508, 6 Sup. Ct. Rep., 858; *Carter Co.* v. *Sinton*, 120 U. S., 517, 7 Sup. Ct. Rep., 650.)

Applying these principles to the act of 1869, we are satisfied that it embraces one subject only, namely, the disposal of lands or grounds lying on and adjacent to the shore of Lake Michigan on the east front of the city of Chicago. Every clause and section of the act relate to that general subject. The title gives notice that the act relates to that subject, and therefore was information to all that the act was to deal with it. What disposition was to be made of the lands and grounds referred to in the title appears from the body of the act.

It is insisted, however, that the effect of the act is, by implication, to enlarge the corporate powers of the Illinois Central Railroad Company, by permitting it to become, for all practical purposes, a wharf or dock company. If this be true, as we think it is, it does not follow that the title fails to express the subject of the act. Whether the submerged lands and Lake Park grounds were to be held, owned, or managed by individuals, or by some municipal or railroad corporation, are matters of detail, which, according to the decisions of the State court, the legislature was not required to express in the title. It was only required to express the subject to which the act related. So far, then, as the act deals with the subject expressed in the title it is capable of being enforced without violating the constitutional provision under consideration.

Some doubt arose, on the argument, as to whether the first part of section 3 and sections 4, 5, and 6 did not embrace subjects that were unexpressed in the title. The title refers "to submerged lands and Lake Park grounds." The railroad company in 1869 occupied, used, and controlled grounds north of Randolph street, which never constituted part of Lake Park grounds, nor were they at that time submerged lands. And the same observation may be made as to the "public grounds" on the shore, east of Michigan avenue, and between Madison and Randolph streets. Hence it was argued that the above sections embraced subjects —that is, lands not submerged, nor part of Lake Park grounds—which are unexpressed in the title. On the other hand, it may be fairly, and we think properly, contended that the general subject, expressed in the title, is lands or grounds "lying on and adjacent to the shore of the lake, on the eastern frontage of the city of Chicago;" that all the lands or grounds described in the body of the act, whether submerged or not, are covered by that description; that the legislature, in referring to submerged lands, may have intended to describe them as they were when fractional sections 10 and 15 were subdivided and platted; and that to limit the general description by a literal interpretation of the words "submerged lands and Lake Park grounds" is inconsistent with the liberal construction which the supreme court of the State has always given to the constitutional provision in question. What was said by the supreme court of the United States in *Montclair* v. *Ramsdell*, 107 U. S., 147, 2 Sup. Ct. Rep., 391, may be here repeated, namely: That the objection should be grave, and the conflict between the statute and the constitution pal-

pable, before the judiciary should disregard a legislative enactment upon the sole ground that it embraced more than one object, or, if but one object, that it was not sufficiently expressed by the title."

It is also contended that no act could, under the constitution, become a law, unless it bore, during the whole period of its pendency in and passage through *each* branch of the legislature, an appropriate title; that is, a title which sufficiently expressed the subject of the act. It will be remembered that the bill, when first introduced, bore the title of "An act to enable the city of Chicago to enlarge its harbor, and to grant and to cede all the rights, title, and interest of the State in and to certain lands lying on and adjacent to the shore of Lake Michigan on the eastern frontage of said city." According to the house journal, the bill, after the second reading, was referred to a committee, which subsequently reported it back with an amendment which, in effect, was a substitute for the senate bill, except the title. The substitute was adopted: The bill as amended was read a third time, and passed: the present title being adopted *after the passage* of the bill in the house. If we do not misunderstand the point here made, it is that even if the present title sufficiently expressed the subject of the bill, *as it finally passed both branches of the legislature*, the title which the bill had at the time of its several readings in and passage *by the house* did not express the subject of the act as it finally passed over the veto of the governor. In support of this proposition, we are referred to *Binz* v. *Weber*, 81 Ill., 288, in which the court said that, by giving effect to the constitutional provision under examination, "no portion of a bill not germane to its general object, or not expressed in its general title when passed through the two houses, can acquire the force of a law. Only the portions of a bill expressed in the title when passed are constitutionally adopted. This being so, it does not matter what title might be adopted after its passage to designate a law. The title adopted after the passage of a bill is no part of the law, nor does it enlarge, limit, or control the law. The title to a bill is an essential part of a bill, and under the constitution every bill must have a title, and such title must truly state the object of the bill. Under this constitutional requirement, then, we must look to the title of this bill as it passed each house, and not to the title of the act after its adoption, to learn what portion of its provisions are constitutional. By thus applying these provisions to the passage of a law, we have no doubt we shall effectuate the intention of the framers of that instrument." In *Johnson* v. *People*, 83 Ill., 431, the court said: "In the case of *Binz* v. *Weber*, 81 Ill., in passing upon a similar provision of the constitution of 1848 applicable to private laws, we said that the validity of an act must depend, under such a provision, upon the title of the bill as it passed both houses, and not on the title of the law after its adoption. Is, then, the title by which the bill passed sufficient to sustain the law?" Having already determined that the present title of the act—which was the title before the bill was sent from the house, as well as when it passed the

senate—sufficiently expressed the subject thereof, it is only necessary, under the decision of the State court, to inquire whether the subject of the act was sufficiently expressed by this title at the time it passed the house. That there is some difference between the original and substituted title must be conceded. But that difference is not so marked as to justify the court in sustaining the point under examination. The general subject of each title is "certain lands lying on and adjacent to the shore of Lake Michigan on the eastern frontage of the city of Chicago." The original title suggested the enlargment by the city of its harbor, and the cession of the rights, title, and interest of the State in the lands referred to. But to whom such cession was to be made was not distinctly indicated. The idea conveyed was that the lands described were to be used so as to enable the city to enlarge its harbor. Turning to the body of the act as it passed the house, we find that the lands therein disposed of are lands embraced within the description in the original title; the rights, title, and interest of the State therein being granted and ceded. The only part of the original title which does not express anything to be found in the act are the words "to enable the city of Chicago to enlarge its harbor." But that difference is immaterial, for everything in the act is sufficiently expressed in the remainder of the title as it passed the house before the present title was substituted; that is, by the words "to grant and to cede all the rights, title, and interest of the State in and to certain lands lying on and adjacent to the shore of Lake Michigan on the eastern frontage of said city." Had these words constituted the title of the act as finally passed, we do not doubt it would have met the requirements of the constitution. If this be so, the act did not fail to become a law merely because the original title contained superfluous words.

Another objection to the act of 1869, based upon the local law, rests upon sections 1 and 2 of article 11 of the constitution of Illinois, adopted in 1870, which provide:

SECTION 1. No corporation shall be created by special laws, or its charter extended, changed, or amended, except those for charitable, educational, penal, or reformatory purposes, which are to be and remain under the patronage and control of the State; but the general assembly shall provide, by general laws, for the organization of all corporations hereafter to be created.

SEC. 2. All existing charters or grants of special or exclusive privileges under which organization shall not have taken place, or which shall not have been in operation within ten days from the time this constitution takes effect, shall thereafter have no validity or effect whatever.

These sections of the constitution took effect August 8, 1870. It is contended that neither at that time, nor within ten days thereafter, was there a valid or binding acceptance by the railroad company of the provisions of the act of 1869; consequently, it is argued, the act fell, so far as it gave the company the right to hold property which it was not previously entitled to hold for the purposes specified in its charter, and

so far as it enlarged its corporate powers. The constitutional provisions just cited have no bearing upon the present case. The act of 1869 is not a "grant of special or exclusive privileges," within the meaning of those provisions. It is a grant of lands to a railroad corporation, to be used, part of them as passenger depot grounds, and part of them for the purpose of improving a harbor, and thereby promoting commerce and navigation upon public navigable waters. That the act had the effect to increase the corporate powers of an existing corporation, and enable it to engage in business not embraced in its original charter, does not bring the act within the operation of section 2 of article 11. Section 2 is to be interpreted in connection with section 1; and, so interpreted, it is clear that the framers of the constitution intended to strike down all corporations then existing which, within ten days after that instrument took effect, were still unorganized, or were not in operation as corporations. There was no purpose to take away any additional special or exclusive privileges granted to corporations, organized and in actual operation, as was the Illinois Central Railroad Company, at the time the constitution was submitted to the popular vote, or to interfere with any grant of land made by the State before that date.

An argument much pressed in behalf of the State and the city is that a mere legislative grant of lands can not be made effectual for any purpose; since by section 25, article 4, constitution of 1848, "all grants and commissions shall be sealed with the great seal of the State, signed by the governor, or person administering the government, and countersigned by the secretary of state." The contention is that the issuing of a completed patent was necessary to vest the title; and whether it should issue even after the legislature had expressed the intention of parting with the State's title was, under the constitution, for the governor to determine; and that until that determination was evidenced by a grant signed by him, or by the person administering the government, and sealed with the great seal of the State, no title passed. A similar question arose in *Rutherford* v. *Greene's Heirs*, 2 Wheat., 196, 199. In 1780 the State of North Carolina passed an act reserving a certain tract of country for the officers and soldiers of the line of that State. In 1782 another act was passed for the relief of the officers and soldiers of the Continental line, the tenth section of which allotted and gave 25,000 acres of land to Maj. Gen. Nathanael Greene, his heirs and assigns, within the bounds reserved for the use of the army, to be laid off by commissioners, as a mark of the high sense which North Carolina entertained "of the extraordinary services of that brave and gallant officer." In opposition to the title of Greene's heirs, it was contended that the legislative enactment was ineffectual as a grant, under the provision of the constitution of that State which declared "that there shall be a seal of this State which shall be kept by the governor and used by him as occasion may require, and shall be called the 'Great Seal of the State of North Carolina,' and be

affixed to all grants and commissions." Chief Justice Marshall, speaking for the whole court, said: "This legislative act, it is said, can not amount to a grant, since it wants a formality required by the constitution. This provision is so obviously intended for the completion and authentication of an instrument attesting a title previously created by law—which instrument is obviously the mere evidence of prior legal appropriation, and not the act of original appropriation itself—that the court would certainly have thought it unnecessary to advert to it had not the argument been urged repeatedly and with much earnestness by counsel of the highest respectability." The court held that the act of the legislature vested a title in Gen. Greene to 25,000 acres, and that the survey thereof, made pursuant to the statute, gave precision to that title and attached it to the land. This case was referred to with approval in *Fremont* v. *U. S.*, 17 How., 542, 559. We are of opinion that whatever may be the scope of the provision of the State constitution declaring that all "grants" shall be sealed with the great seal of the State, and signed by the governor, or the person administering the government, it was not intended to withhold from the legislature the power by statute to pass a complete legal title to lands belonging to the State.

Other objections to the act of 1869, founded on specific provisions of the State constitution, are made. Some of them are not deemed of sufficient gravity to require special notice, while, in respect to others, the conclusion reached upon the points examined renders it unnecessary to consider them.

Proceeding, then, to the examination of questions involving the construction of the Lake Front act of 1869, and the effect of the repealing act of 1873, we observe that the third section of the act of 1869 *confirms* "the right of the Illinois Central Railroad Company under the grant from the State in its charter, * * * and under and by virtue of its appropriation, occupancy, use, and control, and the riparian ownership incident to such grant, appropriation, occupancy, use, and control in and to the lands, submerged or otherwise, lying east of the said line, running parallel with and 400 feet east of the west line of Michigan avenue in fractional sections 10 and 15." This confirmation covers all that was done by the railroad company prior to April 16, 1869, in the way of filling in the lake, and constructing wharves, slips, piers, tracks, warehouses, etc., between Chicago River and the north line of Randolph street. It also covers the occupancy and use by it for way-ground of the two triangular pieces of ground immediately south of Randolph street. We have already expressed the opinion that what was done in these respects by the railroad company was to be justified by its riparian ownership, by its charter, and by the city ordinances of 1855 and 1856. If, however, we should be in error in so holding, it is clear that its action, in the particulars just stated, was legalized by the confirmatory clause of section 3 of the act of 1869. If what was done by the railroad company

prior to April 16, 1869, in the localities discussed in that clause, had been done under legislative authority previously conferred, the company would undoubtedly have acquired thereby property rights that could not have been taken from it except upon compensation. But subsequent legislative ratification or confirmation of what was done is equivalent to original authority. (*Grenada Co. Sup'rs* v. *Brogden*, 112 U. S., 271, 5 Sup. Ct. Rep. 125; *Anderson* v. *Santa Anna*, 116 U. S., 364, 6 Sup. Ct. Rep. 413.) This being so, it was beyond the power of the State, consistently with the constitution of Illinois, or the Constitution of the United States, to revoke that confirmation, as was attempted to be done by the repealing act of 1873. But the most important provision in the act of 1869 is the one granting in fee to the Illinois Central Railroad Company, its successors and assigns, all the right and title of the State in and to the submerged lands on the east front of the city of Chicago, constituting the bed of Lake Michigan, and lying east of the breakwater of the company, for the distance of 1 mile, and between the south line of the south pier [near Chicago River] extended eastwardly and a line extended eastward from the south line of lot 21, south of and near to the round house and machine shops of said company. This and other grants to the Illinois Central Railroad Company in the act of 1869 were declared therein to be upon the express condition that the company shall "perpetually pay into the treasury of the State the per centum on the gross or total proceeds, receipts, or income derived from said road and branches stipulated in its charter, and also the per centum on the gross receipts of said company reserved in this act."

What was the effect of the repealing act of 1873 upon the grant of submerged lands? It is contended by the railroad company that the repealing act of 1873 is inoperative and void, for the reason, among others, that its provisions are repugnant to that clause of the constitution of Illinois, in force at the time of the passage of the act of 1869, which provides that "no contract, obligation, or liability of the Illinois Central Railroad Company to pay any money into the State treasury, nor any lien of the State upon or right to tax property of said company, in accordance with the provisions of the charter of said company, approved February 10, in the year of our Lord 1851, shall be released, suspended, modified, altered, remitted, or in any manner diminished or impaired by legislative or other authority." The repeal of the act of 1869 does not purport to release, suspend, modify, alter, remit, diminish, or impair any contract, obligation, or liability, of the company, or any lien of the State, or any right of the State to tax the property, arising *under the company's charter of 1851*. Consequently the repeal is not in violation of the constitutional provision referred to. The company also insists that it was beyond the power of the legislature to withdraw this grant, especially after the company's acceptance of the act of 1869, and after it had incurred, as it claims to have done, large expenditures, upon the faith that the provisions of said act would be respected by the State and the

city. Upon a careful consideration of all that has been said upon this important and difficult question, the court is of opinion that, as respects the submerged lands constituting the bed of the lake, and expressly granted by the third section of the act of 1869, the repealing act of 1873 did not infringe any legal right of the company, and was a valid exercise of legislative power.

It is clear that, in respect to these submerged lands, the act of 1869 imposed upon the company no duty or obligation that was enforceable by legal proceedings. The act was passed before the General Government had, in the interest of commerce, adopted any plan for an outer harbor at the city of Chicago. And we agree with one of the learned counsel of the railroad company when he says that, looking at the terms of the grant, the nature and situation of the land granted, and all the attendant circumstances of which the court may properly take cognizance, it is manifest that the intention of the legislature was to enable that company, in the interest of commerce, and therefore for public purposes, to construct an outer harbor at Chicago, and to invest it with power to build, maintain, and lease wharves and docks for the use of shipping. The ownership of the soil under the lake would have been of no practical value to the railroad company for any purpose, except those just stated. A trust was engrafted upon the fee in the submerged lands for the benefit of the public, and not for the aggrandizement of the railroad company. This interpretation of the act is fortified by the prohibition upon the company's granting, selling, or conveying the fee—a restriction upon its power of dealing with these lands inconsistent with an absolute title thereto. It is further sustained by the declaration that nothing in the act should authorize obstructions to the harbor, or the impairment of the public right of navigation; and by the reservation of the right of the general assembly to regulate "the rates of wharfage and dockage to be charged in said harbor." In short, the legislature intended by the act of 1869 to secure such improvement of the harbor of Chicago as was demanded by the large commerce of the lake, and to that end proposed to place certain resources of the State at the command of the railroad company, as an agency of the State, with such an enlargement of its powers and privileges as would enable it to accomplish the public objects in view. Whether the railroad company in due time, and in a legal mode, accepted the provisions of the statute, and whether any formal acceptance of those provisions upon its part was necessary, are questions elaborately discussed at the bar. Without determining either of those questions, we assume, for the purposes of this case, that such an acceptance was made, in proper form, and so as to invest the company with the power, not given in its original charter, of erecting and maintaining wharves, docks, and piers, in the interest of commerce, and beyond the necessities or legitimate purposes of its own business as a railroad corporation. We are nevertheless unable to perceive why it was not competent for the State, by subsequent legislation repealing the act of 1869, to withdraw these

additional powers of the company, thereby restricting it to the business for which it was incorporated, and to resume control of the resources and property which it had placed at the command of the company for the improvement of the harbor. When the act of 1869 was passed, it was deemed best for the public interests that the improvement of that harbor should be effected by the instrumentality of a railroad corporation interested to some extent in the accomplishment of that result. But if the State subsequently determined upon considerations of public policy, that this great work should not be intrusted to any railroad corporation, and that a corporation should not be the owner of even a qualified fee in the soil under the navigable waters of the harbor, no provision of the national or State constitution forbade the general assembly of Illinois from giving effect, by legislation, to this change of policy. It can not be claimed that the repeal of the act of 1869 took from the company a single right conferred upon it by its original charter. That act only granted additional powers and privileges for which the railroad company paid nothing, although, in consideration of the grant of such additional powers and privileges, it agreed to pay a certain per centum of the gross proceeds, receipts, and incomes which it *might* derive, either from the lands granted by the act, or from any improvements erected thereon. But it was not absolutely bound, by anything contained in the act, to make use of the submerged lands for the purposes contemplated by the legislature—certainly not within any given time—and could not have been called upon to pay such a per centum until after the lands were used and improved, and income derived therefrom. The repeal of the act relieved the corporation from any obligation to pay the per centum referred to because it had the effect to take from it the property from which alone the contemplated income could be derived. So that the effect of the act of 1873 was only to remit the railroad company to the exercise of the powers, privileges, and franchises granted in its original charter, and withdraw from it the additional powers given by the act of 1869 for the accomplishment of certain public objects.

The only suggestion of weight against the validity of the repealing act of 1873 is to the effect that after the passage of the act of 1869, and before its repeal, the railroad company had made extensive and costly improvements upon the faith of the grant of the submerged lands, and that the repeal operates to take from it property interests without compensation being made. If the repealing act were attended by any such result, the court would not hesitate to hold that the company could not be deprived of the use of any structures erected or improvements made upon these lands on the faith of the act of 1869, except upon compensation being made to it. But, in fact, no such case is presented, in respect to the submerged lands granted by the third section of the act of 1869, except that an insignificant part of those lands, east of the company's breakwater of 1869, marked on map C, "Built 1873," was reclaimed from the lake by filling in before the act of 1873 was passed. The structures

erected after the passage of the act of 1869, and before its repeal, between Chicago River and Randolph street, and those south of Park Row, were erected, as we have seen, either under the power conferred upon the company by its charter, or with the consent, express or implied, of the city, or in the exercise of its rights as riparian owner of lots or ground on the shore of the lake. Indeed, it is apparant, with the slight exception just stated, that no expenditures were incurred by the railroad company, prior to the repealing act of 1873, distinctly upon the faith of the grant of submerged lands in the third section of the act of 1869.

In support of the position that the legislature could not constitutionally recall this grant of submerged lands, counsel for the company confidently rely upon *Fletcher* v. *Peck*, 6 Cranch, 87. In that case, it was said, among other things: "The contract between Georgia and the purchasers was executed by the grant. A contract executed, as well as one which is executory, contains obligations binding on the parties. A grant, in its own nature, amounts to an extinguishment of the right of the grantor, and implies a contract not to reassert that right. A party is therefore always estopped by his own grant. Since, then, in fact, a grant is a contract executed, the obligation of which still continues, and since the Constitution uses the general term 'contract,' without distinguishing between those which are executory and those which are executed, it must be construed to comprehend the latter as well as the former." This general language must be interpreted with reference to the facts and issues in the particular case in which it is used. The case of *Fletcher* v. *Peck* was this: A statute of Georgia directed certain portions of the vacant lands of that State to be sold to James Gunn and others, constituting the Georgia Company, at a named price. Upon the payment of $50,000 by the purchasers, the governor was required to issue and sign a grant for the same, taking a mortgage to secure the balance, $200,000, payable at a designated time. The cash payment was made, and a grant was signed and issued by the company. The estate passed ultimately into the hands of a purchaser for a valuable consideration, without notice, and *thereafter* the legislature of Georgia repealed the original act outright. The question presented was whether such repeal could affect the vested rights *of that purchaser*. The court adjudged that the State was restrained, "either by general principles which are common to our free institutions, or by the particular provisions of the Constitution of the United States, from passing a law whereby the estate of the plaintiff in the premises so purchased could be constitutionally and legally impaired and rendered null and void." Had the legislature of Georgia repealed the original act before the first purchaser made payment therefor, and before the governor had signed and issued the grant, and taken the required mortgage, the repeal would not have been open to the objection that it took away a vested estate acquired, under valid legislation, by a subsequent purchaser without notice. It is clear that the present case is not controlled by *Fletcher* v.

Peck. The railroad company was not a purchaser of the submerged lands. It paid nothing for them. It only assumed to pay a certain per centum of any income that might be derived from the use of the lands, but it did not come under any enforceable obligation to use them. In short, it accepted the grant of the submerged lands with the knowledge that the only purpose of the State was to improve the harbor of Chicago by the construction and maintenance of wharves, docks, and piers, in aid of commerce on the lake, but without assuming any obligation to make the improvements contemplated. The repeal of the act making the grant was therefore nothing more than a change of policy upon the part of the State, which took from the company no franchise or privilege secured by its charter. The State, in effect, only revoked the license which had been granted to the company to improve the harbor of Chicago, and discharged it from every obligation it might have incurred by entering upon and completing that work.

Upon the whole case, we are of opinion that the effect of the repealing act of 1873 was to withdraw from the railroad company as well the grant of the submerged lands described in the third section of the act of 1869 as the additional powers therein conferred upon it, by implication, to engage in the business of constructing and maintaining wharves, piers, and docks for the benefit of commerce and navigation generally, and not in the prosecution of its business as defined and limited by its original charter; saving to the company the right to hold and use, as part of its way-ground or right of way, the small part of the submerged lands outside of its breakwater of 1869, between Monroe and Washington streets, extended eastwardly, which was reclaimed—presumably upon the faith of the act of 1869—from the lake in 1873, and is marked on Map C "Built, 1873." Such repeal was attended with the further result that while the city of Chicago may, under its charter, preserve the harbor, prevent obstructions being placed therein, and make wharves and slips at the ends of streets, the exercise of those powers, and the whole subject of the development or improvement of the harbor by a system of wharves, docks, piers, and other structures, is with the State, subject only to the paramount authority of the United States under the power of Congress to regulate commerce.

Several important questions were made in reference to the grant, in the fourth section of the act of 1869 to the Illinois Central Railroad Company, the Chicago, Burlington and Quincy Railroad Company, and the Michigan Central Railroad Company, of all right and title of the State in and to the lands submerged or otherwise lying north of the south line of Monroe street and south of the south line of Randolph street, and between the east line of Michigan avenue and the track and roadway of the Illinois Central Railroad Company. But for the purpose of disposing of this branch of the case it is only necessary to say that, construing sections 5 and 6 in connection with section 4, it is clear that

this grant was upon condition that those railroad companies should pay to the city a named sum, in installments, and within a fixed time; and if the tender of the first installment of $200,000 to the comptroller was binding upon the city, the subsequent return of the money to the railroad companies, at their request, deprived them of whatever benefit accrued from that tender, leaving them in the attitude of never having performed the conditions upon which they were to acquire the title to those lands. So that the title remains just where it was before the passage of the act of 1869, namely, in the city of Chicago, in virtue of the recorded subdivision into lots, streets, and public grounds of fractional section 15 and of the southwest quarter of fractional section 10.

In the case of *U. S.* v. *Illinois Cent. R. Co.* it may be said that, upon the demurrer which has been filed, the court can only take into consideration the allegations of the information and such matters as are within its judicial knowledge. It can not bring into that case, as now presented, facts which may have been proven in other cases. The demurrer is sustained, except as to that part of the information which alleges, in substance, that the Illinois Central Railroad Company claims the absolute ownership of, and threatens to take possession of, use, and occupy, the outer harbor of Chicago. It is the opinion of the court that the General Government, upon the showing made by it, has no title to any of the streets or grounds described in said information, and has no standing in court, except so far as it seeks to protect the said harbor against obstructions that would impair the public right of navigation or interfere with any plan devised by the United States for the development or improvement of the harbor.

What has been said is sufficient to dispose of all the questions in these causes which, in the judgment of the court, it is necessary to decide. Counsel will prepare and submit to the court such orders or decrees as will be in conformity with the foregoing views.

JAMES H. McK

In the Supreme Court of the United States.

OCTOBER TERM, 1893.

THE UNITED STATES, APPELLANT,
v.
THE ILLINOIS CENTRAL RAILROAD Company; Michigan Central Railroad Company; Chicago, Burlington and Quincy Railroad Company; Baltimore and Ohio and Chicago Railroad Company; and the city of Chicago.
No. 331.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

BRIEF FOR THE UNITED STATES.

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STATEMENT OF THE CASE.

This is an appeal from a decree of the circuit court sustaining a demurrer of the appellees, the Illinois Central Railroad Company, and the Michigan Central Railroad Company, to an information filed by the United States, and dismissing the information as against all the appellees.

I submit that the information is good, to the extent that it seeks to restrain the appellees from diverting the Public Ground marked on the plat of the Fort Dearborn addition to the city of Chicago from the public easements to which it was dedicated. (*See* the Plat No. 1 in the record.) On this branch of the case the information proceeds upon the theory that the United States being the owners of the land in question, and having dedicated it to certain public purposes, are entitled to enjoin its diversion from those public purposes to private uses. The bill alleges (Rec. 2):

> That before and on the 7th day of June, A. D. 1839, the said United States possessed and owned in fee simple the said southwest fractional quarter of section 10, the same being a reservation out of the public domain, called the Fort Dearborn reservation; and the then Secretary of War having directed the said reservation to be sold, the same was thereupon by his authority laid off into blocks, lots, streets, alleys, and public ground, as an addition to the municipality aforesaid, called the Fort Dearborn addition to Chicago; and on the day last above-mentioned a plat thereof was made and acknowledged by one Matthew Birchard as agent and attorney of the said Secretary of War, and was thereupon duly recorded in the recorder's office of the said county of Cook; on which plat a part of the ground therein comprised, being all that part between the said lake on the east and blocks 12 and 15 (as shown by the said plat) on the west, is designated as "public ground, forever to remain vacant of buildings," and there is a further declaration in these words, to wit, "the public ground between Randolph and Madison streets, and fronting upon Lake Michi-

gan, is not to be occupied with buildings of any description;" as by the said plat, a true copy whereof, marked Exhibit A, is herewith filed and made part hereof, more fully and distinctly appears. And afterward the several lots designated and shown on the said plat were sold and conveyed by the said United States to divers persons, by and according to the said plat and with reference to the same; but the said United States have never parted with the title to the streets, alleys, and public ground in the said plat designated and marked, and still own the same in fee simple, with the rights and privileges, riparian and otherwise, pertaining to such ownership, subject to the use and enjoyment of the same by the public.

The bill further alleges a grant of right of way to the Illinois Central Railroad, under an act of the State of Illinois, approved February 10, 1851, which provided, however, that nothing in that act contained should authorize the said corporation to make location of its tracks within any city without the consent of the common council of such city. (Rec., 4.)

The bill further alleges that the common council of the city of Chicago, by an ordinance dated June 14, 1852, gave the Illinois Central Railroad Company the right to enter upon and use for the purpose of its said railroad and works a space 300 feet wide, for the whole length of the Public Ground shown in said plat of the Fort Dearborn addition, and that the railroad company, having accepted said act of the legislature and said ordinance, "by virtue and under color of the same proceeded to and did build its said railroad and extend and complete the same from the southward into the said city, on the course indi-

cated in the said ordinance, to a terminus near the Chicago River aforesaid; and the said company has ever since maintained and operated its said railroad and continues so to do. And the said district attorney for the United States says that no authority or license was ever given by the said United States to the said company for building or maintaining or operating its said railroad upon or along * * * said public ground shown on the said plat of Fort Dearborn addition, or any part of those tracts of ground" (Rec. 4); that the general assembly of the State of Illinois passed an act on April 16, 1869, whereby it assumed and attempted among other things (3) "to grant in fee to the said Illinois Central Railroad Company, the Chicago, Burlington and Quincy Railroad Company, and the Michigan Central Railroad Company all the right and title of the said State of Illinois in and to the lands, submerged or otherwise, lying north of the south line of Monroe street and south of the south line of Randolph street, and between the east line of Michigan avenue and the track and way of the said Illinois Central Railroad, the said pretended act purporting to grant the said grounds for a passenger station and other railroad purposes, and providing that the said companies named as grantees should pay to the city of Chicago the sum of $800,000, to be likewise applied to such park fund"; that the said Illinois Central Railroad Company, Chicago, Burlington and Quincy Railroad Company, and Michigan Central Railroad Company now give out and claim that the said pretended act was and is a legal and binding act, and passed to them respectively a valid title to the property in and by the same attempted

to be granted; and the same companies now claim the right and threaten to take possession and exclusive control of the property so in and by the said pretended act attempted to be granted to them respectively" (Rec. 6).

In other words, the information shows that the railroad companies named claim title to that portion of the Public Ground shown on the plat of the dedication of the Fort Dearborn Addition lying east of Michigan avenue, and threaten to take possession and exclusive control thereof, for the purpose of appropriating it to a passenger station and other railroad purposes.

ARGUMENT.

I.

The precise question presented by this part of the information does not seem to have been passed upon in the opinion in the circuit court. It is the same question that was presented in the case of *The United States* v. *The Illinois Central Railroad Company*, 2 Bissell, 174, decided by Drummond, J., in favor of the Government.

It is immaterial whether the plat of Fort Dearborn Addition, made by the United States through its Secretary of War, resulted in vesting the fee of the Public Ground in the city of Chicago or operated only as a common law dedication, as held by Judge Drummond, leaving the fee in the United States. One who dedicates property to public uses is entitled in a court of equity to enforce the trusts declared by the dedication, whether he accompanied the dedication with a transfer of the fee to the municipality or retained the fee in himself.

Warren v. *The Mayor of Lyons City* (22 Iowa, 351, 355) is a case in which the fee of a public square had vested in the city. The suit was brought by the dedicator to enjoin the municipal authorities from selling the square or otherwise diverting it to uses and purposes foreign to those for which the dedication was made. The court said:

> For the use contemplated, they may have parted with the fee—the "proprietary right," but not for all purposes; and, therefore, if the city authorities, as the claimed trustee of the public, should undertake to make gain by the sale, or to authorize its use for anything else but a "public square," they violate the trust, and the original owners, in virtue of the terms of the grant, may demand that the trust shall be executed in good faith, and restrain any such proposed violation of the terms upon which the grant was accepted.
>
> *Nothing can be clearer than that if a grant is made for a specific, limited, and defined purpose, the subject of the grant can not be used for another, and that the grantor retains still such an interest therein as entitles him in a court of equity to insist upon the execution of the interest as originally declared and accepted.*

In *Barclay* v. *Howell's Lessee* (6 Pet., 498, 507) Mr. Justice McLean, in denying the right of the dedicator to recover on ejectment, said:

> If this ground had been dedicated for a particular purpose, and the city authorities had appropriated it to an entirely different purpose, it might afford ground for the interference of a court of chancery to compel a specific execution of the trust, by restraining the corporation, or by causing the removal of obstructions. But, even in such a case, the prop-

erty dedicated would not revert to the original owner. The use would still remain in the public, limited only by the conditions imposed by the grant.

In *Hardy* v. *Mayor, etc., of Memphis* (10 Heisk., 127), where the original proprietors sought to recover land, first, because not dedicated, and second, if dedicated, because the use was claimed to have been abandoned, the court said a misuse of the land did not work a forfeiture, "nor entitle the original proprietors to any relief except, upon a bill properly filed, to have the buildings obstructing the proper use removed." (P. 128.)

The demurrer admits the allegation of the bill that the fee of the public ground is in the United States, and that allegation must be taken as true. If, however, the court may consider the effect of a conveyance of the lots marked on the plat with reference to the plat and assume that the Government had not expressly reserved title in itself to the streets and public grounds, the Government would clearly still be the owner in fee of the east half of the ground bordering the lake. (*Banks* v. *Ogden*, 2 Wall., 57.)

Since the fee to the whole of the Public Ground, or at least to that half abutting on the lake (as it was at the time of dedication), is in the United States, subject to the easement of the public, and since the United States may become entitled to possession of the ground (and an illustration of an owner of the fee in a street becoming entitled to possession is *Harris* v. *Elliott*, 10 Peters, 25), a special reason exists why they should be allowed to have their *rights* in this property declared by this court to prevent a cloud, so that the railroad company can not assert,

if it proceeds to erect its depot, that the Government is estopped. The United States can not maintain trespass if the erection is made because they will not have a right to possession, the act of the legislature not being a lawful exercise of authority. The Government has only this remedy to protect itself against the threatened invasion of its reversionary interest, and it is obliged to act promptly to prevent the claim of title by adverse use or estoppel being set up as in *Williams* v. *First Presbyterian Church Society* (1 Ohio St., 478.)

It is to be noted that the city of Chicago is the proposed beneficiary of the selling price of the Public Ground, and is in the attitude of disclaiming and acting in hostility to the trust.

II.

But it is claimed that the United States do not have in this respect the rights of a private person who has made a dedication. The claim is based upon a failure to distinguish between the position of the United States, assuming to exercise sovereignty and their position as the owners of property which they have subdivided and sold, as any private person or corporation might do, in connection with a plat of subdivision.

The case of *New Orleans* v. *The United States* (10 Pet., 662), relied upon by the appellees, is not in point. In that case relief was denied the United States upon the ground that the King of Spain had not power to alienate the public levee in New Orleans, that the treaty did not pass the title to the United States, and that the Federal

Government did not succed to the limited police jurisdiction, which had been exercised by the King of Spain to regulate the use of the quay; in other words, the United States was a mere volunteer; whereas at bar we have an abandoned military post, held as the propererty of the United States and sold and dedicated by them as such.

In *United States* v. *Chicago* (7 How., 185, 194), this court recognized the right of the Federal Government to hold the very land in question as a *mere proprietor*. And, certainly, when it so holds land in fee there is no rule of law that divests it of that fee until it has parted with it in a legal manner. The Government is not claiming any municipal power or control over this Public Ground; but only the same rights concerning it that an ordinary person would have, asserting merely the legal rights which grew out of its ownership as a proprietor.

The authorities cited to sustain the argument on pages 12 to 17 of the brief of counsel for appellee have no bearing on the question as to how the United States may dispose of land not held in trust for the States to be created, nor for municipal purposes while temporarily exercising sovereignty pending the coming into existence of a Territory or State prepared to receive a transfer of such property *and power*, but held by it solely for its own purposes either as mere proprietor (as was the property affected by the decision in *Van Brocklen* v. *State of Tennessee*. 117 U. S., 151), or specially set apart (as was the Fort Dearborn tract) for Government use for military purposes (7 How., 194.)

The language quoted by Mr. Ayer on page 13 of his brief, from page 224 of the opinion in *Pollard's Lessee* v. *Hagan* (3 How.) was used in connection with the argument of the court directed to establishing the proposition that the temporary governmental control and authority which the United States possessed over the "public lands" in the State of Alabama, was derived " by force of deeds of cession and the statutes connected with them, and not by any municipal sovereignty which it may be supposed they possess, or have reserved by compact with the new States, for that particular purpose," just as the Government to-day may, by cession of a State, acquire exclusive jurisdiction and sovereignty over land within the State. The court was combating the claim of the United States that by virtue of their sovereignty they had title to the navigable waters within the limits of the State.

At the third session of the Forty-sixth Congress a bill was introduced in the Senate, No. 1935, by Senator Logan, to confirm to the city of Chicago the title to the public grounds in question. (Cong. Record, vol. 11, part 1, p. 257.) It was referred on the same day to the Judiciary Committee, and on January 25, 1881, reported back favorably, with amendments (p. 899, and minority report, p. 890). Senator Edmunds made a minority report, which is printed as an appendix to this brief. (See report No. 795, part 2, Forty-sixth Congress, third session, Senate Reports, vol. 1, 1880–'81.) The bill was passed by the Senate, but defeated in the House.

The object of the bill sufficiently appears from the following passage from the report of the committee. After

referring to the Fort Dearborn dedication, the report says (page 990):

> It appears, however, from a decision made a few years since by the U. S. circuit court at Chicago, that the presiding judge was of the opinion that although the streets and public grounds in Fort Dearborn addition to Chicago had been lawfully dedicated, with the consent of the Government, through its authorized agent, to public use, yet in consequence of certain technical informalities in making the plat the dedication operated as a common-law dedication and not under the statute, and, therefore, that the legal title to the streets and public grounds was still in the United States, subject to the public use, which had been affixed to them; the United States, however, having no control over them inconsistent with the purpose for which they had been dedicated. The bill proposes that this mere naked legal title shall be relinquished to the city of Chicago, and your committee are of opinion that the General Government has no interest in retaining that title after having parted with all beneficial interest in the property forty years ago for ample consideration.
>
> The bill further proposes that the consent of Congress shall be granted to the sale and conveyance by the city of Chicago of a portion of the ground dedicated to public use upon the plat of this addition, for the erection thereon of a railway passenger station house, which, it appears, is intended for the joint use and accommodation of several important railway lines entering the city upon the tracks and right of way of the Illinois Central Railroad Company, which lie immediately adjacent.

The object of the present suit is to prevent the diversion of this Public Ground to private uses, to which Con-

gress refused to give its consent, but which the city and the railroad companies have conspired to accomplish in spite of the action of the Congress. I respectfully submit that the title and interest of the United States should be declared and quieted, as against all of the appellees, including the city of Chicago.

LAWRENCE MAXWELL, JR.,
Solicitor-General.

APPENDIX.

[Minority report, by Senator Edmunds, opposing passage by Senate of bill to release title of United States. (11 Cong. Rec., p. 990.)]

Prior to June, 1837, the United States was the owner, in its political character, as a part of the cession of the Northwest Territory, of a tract of land at Chicago known as the Fort Dearborn Reservation, bounded north by the Chicago River and east by Lake Michigan, the southern and western boundaries being upon public lands that had before been disposed of in the usual way. In that year, under the authority of law, the Secretary of War proceeded to lay off into lots and sell several blocks of land to private purchasers, with streets intersecting, and leaving unsold the northerly point of the reservation at the junction of the Chicago River with Lake Michigan, and a quantity of land lying along the lake shore near the southern part of the reservation. On the official plan of the reservation, showing the lots to be sold, this last-named unsold land is left not laid out, and on the plan, at that point, were entered the words, "Public ground, forever to remain vacant of buildings." In the year 1849 the Supreme Court of the United States, in a case with the city of Chicago, decided that the United States did not stand in the attitude of a mere private owner of the property, and that the public authority of the city of Chicago had not acquired the right to open streets over the unsold portions.

Afterwards certain railway companies, acting, it is said, with the permission of the State of Illinois and the city of Chicago, built a railway track in the shoal water in front of this reservation, and erected freight buildings, etc., outside of the shore-line. It is a fact, conceded on all sides, that the keeping open of the part marked public ground any longer will be of no benefit to the adjoining proprietors nor to the general public, but that the adjoining property will be increased in value by the erection, on a part of this reserved land, of a railway passenger depot. The railway companies have offered, or are willing to pay, the sum of about $800,000 for that part of this ground so marked as to remain without buildings, and some adjacent ground in which the United States has no proprietary interest, it is said; but, it is believed, this sum is far below the actual value of the land. This adjacent part, in which the United States has no interest, constitutes only one-third of the ground proposed to be used for this purpose, so that the property of which the United States confessedly owns the fee is worth at least $533,000. Over this land of the United States, under the implied covenant not to build upon it arising from the entry on the plan before referred to, the people of the city of Chicago have, at most, a right of passage, and the abutting proprietors the right of view. The city of Chicago wishes to surrender its right of passage to the railway company, and the abutting proprietors desire it to be done, as a benefit to their property, and by this bill the United States is to sell all its right in the land, being the absolute ownership of it, subject to the easement of passage and view before mentioned, and allow the city of Chicago to take the whole purchase money. It appears to me that this is simply giving away the property of the United States to a party who has, at most, an easement of passage on it, in order that he may sell it for more than half a million of dollars.

I am unable to see the justice of this. The United States might, with more propriety, ask the reverse. It

may be true that the value of the property subject to the easement of passage and view is practically nothing; but it is equally true that the value of the easement is nothing as the subject of sale for any purpose, if, indeed, such a right could be a subject of sale except as appurtenant to the adjoining property. In this state of the case the most that can be claimed for the city is, that it and the abuttors and the United States stand on equal ground; neither owns anything in the land of any salable value, but each of the three parties are willing that the easements shall be surrendered and the lots sold for business purposes connected, it is true (as it is in most cases of business transactions), with the promotion of local public interest. How can it be right then, in such a case, that the owners of the easement shall take the whole of the purchase money and deprive the owner of the fee of any share of it? I think, then, that the United States ought not to be called upon to convey this land without being paid a fair proportion of the purchase money, and that to do so would be to give several hundred thousand dollars, justly belonging to the Treasury of the United States, to the treasury of the city of Chicago. I am not able, therefore, to agree to the passage of the bill. Aside from this main question, the bill is so framed as, I fear, to expose to danger the rights of the United States in other parts of the Fort Dearborn Reservation than that I have especially referred to; to injury, and, possibly, to the loss of control over the lot marked number one on the plan referred to, and the street on the south and west of it, as well as to its water-front.

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MAR 19 1894
JAMES H. McKENNEY,
CLERK.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1893.

THE UNITED STATES,
Appellant,
vs.
ILLINOIS CENTRAL RAILROAD COMPANY et al.,
Appellees.

Appeal from the Circuit Court of the United States, for the Northern District of Illinois.

BRIEF FOR THE ILLINOIS CENTRAL RAILROAD COMPANY, APPELLEE.

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BARNARD & GUNTHORP, PRINTERS, CHICAGO.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1898.

THE UNITED STATES,
Appellant,
vs.
ILLINOIS CENTRAL RAILROAD COMPANY et al.,
Appellees.

Appeal from the Circuit Court of the United States, for the Northern District of Illinois.

BRIEF FOR THE ILLINOIS CENTRAL RAILROAD COMPANY, APPELLEE.

The information in this case was filed June 22, 1887, and the demurrer was argued in the Circuit court at the July term, 1887, upon the final hearing before Mr. Justice Harlan and Judge Blodgett of the Chicago Lake-Front case, so-called, which afterwards came to this court by appeal, and was decided at the October term, 1892. (146 U. S. Rep., 387.)

The opinion of the Circuit court, delivered by Mr. Justice Harlan, February 23, 1888, is reported in 33 Federal Reporter, 730–776. Those parts of the opinion relating to the questions raised by this demurrer may be found on pages 750 to 755, and page 776.

The demurrer was sustained, "except as to that part "of the information which alleges, in substance, that "the Illinois Central Railroad Company claims the ab- "solute ownership of, and threatens to take possession "of, use and occupy the outer harbor of Chicago," the opinion of the court being "that the General Govern- "ment, upon the showing made by it, has no title to "any of the streets or grounds described in said informa- "tion, and has no standing in court, except so far as it "seeks to protect the said harbor against obstructions "that would impair the public right of navigation, or "interfere with any plan devised by the United States "for the development or improvement of the outer "harbor."

Subsequently, on the 23d of August, 1890, the United States attorney was allowed, without notice to the respondents, to amend the information by striking out everything that related to the outer harbor and the encroachments alleged to have been made, or threatened, in the navigable waters of the lake; and, at the same time, an order was entered by the District judge sustaining the demurrer to the information as amended, and directing that the information be dismissed, "without "prejudice to the United States of America, however, "to hereafter institute any appropriate action or pro- "ceeding for the purpose of enforcing any rights they "may have in the navigable waters of the lake or outer "harbor at Chicago;" and thereupon an appeal was prayed and allowed to the Supreme court. (Printed Rec., 24, 25.)

For the convenience of the court, a full abstract of the information as amended, and of the demurrer, will be appended to this brief.

I. The *gravamen* or substantial ground of the complaint is that encroachments have been made or threatened on lands alleged to be the property of the United States. The respondents are charged with an invasion upon the proprietary interests of the United States.

The lands in question are situated on the shore of the lake, in fractional sections ten and fifteen in Chicago, between the Chicago river and and Twelfth street, and it is alleged that parts of them have been reclaimed from the lake by the Illinois Central Railroad Company. But there is no averment that the constructions so made have caused any obstruction or detriment to commerce or navigation.

It was properly decided in the Circuit court that the United States, upon its own showing, had no title to any part of the lands in controversy, and, therefore, no standing in court to call in question the acts or pretensions of the railroad company.

II. A part of the property is the strip of land two hundred feet in width on the border of the lake, adjoining the public ground lying between the north line of block 23 in fractional section fifteen addition, extended eastwardly, and the central line of Madison street extended, which, as appears from the information, the Illinois Central Railroad Company was authorized to appropriate for its roadway by an ordinance of the city of Chicago passed June 14, 1852, and which it has ever since occupied and used for that purpose.

It is alleged in the information that fractional section fifteen was one of the tracts of land granted to the State of Illinois by an act of Congress, approved March

2, 1827, for the purpose of aiding the state in opening a canal to unite the waters of the Illinois river with those of Lake Michigan. It was a grant *in praesenti*, and the state was authorized, in express terms, "to "sell and convey the whole, or any part of the said "land, and to give a title in fee simple therefor, to "whomsoever shall purchase the whole or any part "thereof." (4 U. S. Stat., 234, 662.) The grant has never been revoked; and it is alleged in the information that the purpose for which the same was made has "been long since fulfilled by the construc- "tion and completion of the Illinois and Michigan "canal."

In 1854, several years after the canal was completed and opened for use, the governor of the state was authorized by an Act of Congress to cause the remainder of the land to be selected, to which the state was entitled under the provisions of the Act of March 2, 1827. (10 U. S. Stat., 344.)

It is further alleged that the Board of Commissioners of the Illinois and Michigan Canal, on the 13th of June, 1836, pursuant to the requirements of an Act of the legislature approved January 9, 1836, made, acknowledged, and caused to be recorded, a plat of the said fractional section, in substantial compliance with the Illinois statute then in force providing for the recording of town plats, by virtue whereof the fee of the streets and alleys designated on the plat became vested in the municipality of Chicago, for the use of the public; and afterwards all the lots in the subdivision were sold by the commissioners "by, and according to the same plat."

The Act of January 9, 1836 (Laws of 1836, 145, 150), under which the commissioners proceeded, directed

that the whole fractional section should be "laid off and "subdivided into town lots, streets and alleys," and the map of the subdivision, a copy of which is attached to and made a part of the information, shows upon its face that the entire tract was subdivided in conformity to that requirement.

The law then in force providing for the making and recording of town plats (statute of February 27, 1833, —Ill. Rev. Stat. of 1833, p. 599), provided that every donation or grant to the public, marked or noted as such on the plat, should be deemed in law a sufficient conveyance to vest the fee simple title, and that "the land "intended to be for streets, alleys, ways, commons or "other public uses, in any town or city, or addition "thereto, shall be held in the corporate name thereof in "trust to and for the uses and purposes set forth, and "expressed or intended." The plat in such case has all the force of an express grant. It operates by way of estoppel, and concludes the former owner and all claiming under him from asserting title.

Zinc Company v. *City of La Salle*, 117 Ill., 411, 414, 415.
City of Chicago v. *Rumsey*, 87 Ill., 348.
Gebhardt v. *Reeves*, 75 Ill., 301.
Hunter v. *Middleton*, 13 Ill., 50.
Canal Trustees v. *Havens*, 11 Ill., 554.

It is conceded in the information, that by virtue of this plat the legal title to the land embraced in the streets became vested in the city, in trust for the use of the public. One of those streets is Michigan avenue, which is shown by the plat to occupy the whole space between the easterly tier of lots and the lake. The

claim of the city to the ownership of that land was directly involved in the Lake-Front case, and its claim to the whole of it, including that occupied by the tracks and breakwater of the railroad company (subject to the easement acquired by the company), was distinctly sustained by this court.

Illinois Central Railroad v. *Illinois*, 146 U. S., 387, 462, 463.

It would seem to be absolutely clear that the United States has no semblance of title to this part of the premises in controversy.

III. It is equally clear that the United States has no proprietary interest in that part of the premises situated in fractional section ten.

It appears from the information that the south-west fractional quarter of section 10 was a government reservation, known as Fort Dearborn Reservation, and that on the 7th of June, 1839, it was, by authority of the Secretary of War, laid off into blocks, lots, streets, alleys and public grounds, and a plat thereof was made and acknowledged by the agent and attorney of the Secretary of War, and duly recorded. A copy of the plat is filed with and made a part of the information. All the lots were sold and conveyed by the United States to divers persons "by and according to the said plat and "with reference to the same." But it is claimed that the United States has never parted with the title to the streets and public grounds delineated on the plat; and it is charged that the railroad company in 1851 and 1852, by virtue or under color of its charter and an ordinance of the City of Chicago, proceeded to build its railroad in conformity to the provisions of the ordinance, and has

ever since maintained and operated the same; and that no authority or license was ever given by the United States for building or maintaining the railroad along or upon the open space on the public ground shown upon the plat.

The ordinance (it is alleged) provided that the company might enter upon and use for its railroad and works, to protect the same from the lake, a space three hundred feet wide from near Twelfth street to the north line of Randolph street, the interior or west line of such three hundred foot space to be four hundred feet east of and parallel with the west line of Michigan avenue.

The public ground designated on the plat extends along the lake from the central line of Madison street (the southern boundary of the subdivision) to the north line of Randolph street, and it will be seen on looking at the map, that the three-hundred-foot strip designated in the ordinance for the use of the railroad company, was situated in the waters of the lake at least two hundred feet distant from any part of the shore in fractional section ten. It is not alleged that the railroad company has entered upon any part of the "public ground," but only that the railroad was built "on the course indicated "in the said ordinance." No part of the public ground shown on the plat is in fact occupied by the railroad.

It is further charged that the railroad company, in 1855 and 1856, claiming to act under certain ordinances of the city, took possession of and laid its tracks upon two triangular parcels of land, one on the west and the other on the east side of its way-ground, bounded on the north by the north line of Randolph street. It is alleged that the westerly parcel was a part of the public ground shown on the plat of Fort Dearborn addition;

but the plat, which is made a part of the information, refutes this statement. It will be seen on looking at the plat (although this perhaps is not very material), that both parcels lie east of the shore line, and, when the plat was made, formed part of the bed of the lake. It is indeed stated in the information, that, when the railroad was constructed, the shore of fractional sections ten and fifteen had been abraded and washed away for a space of from one to two hundred feet in width by the action of the lake, "and therefore the said railroad, along and "upon those two tracts, was built upon piles in the "water." In 1839, when fractional section ten was subdivided, it appears from the map itself that the west line of Michigan avenue was at no point, between the north line of Randolph street and the southern boundary of the section, more than two hundred feet distant from the margin of the lake.

It is also alleged that the railroad company, in or about the year 1873, claiming to proceed under an act of the legislature passed in 1869, took possession of and appropriated to its own use a certain part of the lake bed adjacent to the public ground shown on the plat of Fort Dearborn addition, and filled up the same with earth and laid railroad tracks thereon.

Also, that the company had built and now maintains a high bridge or viaduct of stone and iron, on a line with Randolph street, over its railroad tracks, on a part of the said public ground and on land reclaimed from the water adjoining the same.

And further, that by the act of 1869, above referred to, the legislature attempted to grant in fee to the Illinois Central Railroad Company, the Chicago, Burlington and Quincy Railroad Company and the Michigan Central

Railroad Company, for a passenger station and other railroad purposes, all the right and title of the state in and to the land, submerged or otherwise, lying north of the south line of Monroe street, south of the south line of Randolph street, and between the east line of Michigan avenue and the track and way of the Illinois Central railroad, provided the grantees should pay to the city of Chicago the sum of eight hundred thousand dollars. It is not stated that this sum, or any portion of it, was ever paid to the city by the grantees, nor is it alleged that the grantees, or either of them, have attempted to take possession of the property; but it is charged that they claim the right, and threaten to take possession. Some of the land above described—about two thirds of it—is a part of the public ground shown on the plat of Fort Dearborn addition. The rest lies in the adjoining fractional section fifteen.

Lastly, it is alleged that the railroad company acquired in 1852, and has ever since held possession of, that part of the shore of the lake lying between the Chicago river and Randolph street, and has since, from time to time, without right, extended its works eastward into the lake, by making wharves, piers, slips and solid ground, to a distance of more than twenty-five hundred feet, and the area so reclaimed has been, and is not only occupied and used for its own tracks, station-houses, freight-houses, etc., but by the other railroad companies made defendants in the suit, for similar purposes, as well as by divers other corporations and individuals, and largely for purposes not connected with commerce by the waters of the lake.

It is not pretended that the railroad company, in making these constructions, has committed a trespass

upon lands in which the United States has any legal or equitable interest; nor is it suggested that the constructions made are injurious to navigation. It is in fact conceded that the title to the land reclaimed was in the state, and there is no pretense that anything has been done by the company which transcends the right every riparian owner has to build wharves and piers in navigable waters for his own use or the public use when no positive law is violated by their erection. It can be no objection to these works, that, while promoting the interests of navigation, they are also essential to the efficient operation of the company's railway. Indeed, that fact, so far as it has any bearing, has the contrary effect, since by the express terms of its charter the company was authorized, as stated in the information, to enter upon and take possession of any lands belonging to the state "necessary for the construction, completing, al-"tering, maintaining, preserving, and complete opera-"tion" of the railroad.

As to all the other things alleged to have been done or threatened, in, or in front of, fractional section ten, the complaint is based upon the erroneous theory that the title to the streets and public grounds laid out on the plat is vested in the United States, and that the United States has a beneficial interest in the soil. If that foundation fails, the United States obviously has no ground of complaint.

The authority of the Secretary of War to cause the Fort Dearborn military reservation to be subdivided and sold, was derived from an act of Congress approved March 3, 1819, entitled "An act authorizing the sale of "certain military sites," which provides as follows: "That the Secretary of War be, and he is hereby, author-

"ized, under the direction of the President of the United "States, to cause to be sold such military sites, belong- "ing to the United States, as may have been found, or "become useless for military purposes. And the Secre- "tary of War is hereby authorized on the payment "of the consideration agreed for, into the treasury of "the United States, to make, execute and deliver, all "needful instruments conveying and transferring the "same in fee; and the jurisdiction which has been "specially ceded, for military purposes, to the United "States, by a state, over such site or sites, shall there- "after cease." (3 U. S. Stat., 520.)

In 1854, the validity of the survey and plat was recognized by Congress in an Act for the relief of John Baptiste Beaubien (10 U. S. Stat., 805,) by which patents were authorized to be issued for certain lots described on the plat; and it is stated in the information, that all the lots have been "sold and conveyed by the United "States to divers persons, by and according to the said "plat and with reference to the same."

In causing the plat to be made and recorded, the government of the United States was acting simply as a proprietor of land which it proposed to offer for sale. It was manifestly the intention to make a plat technically conformable to the provisions of the local statute, and it appears from an inspection of the plat that all the essential requirements of the statute were observed. No sound reason has yet been suggested for giving to the plat a different effect from that resulting from similar plats voluntarily made and recorded by other landowners. If the authorized officers of the government, charged with the duty of subdividing and selling a tract of public land, choose to proceed under the provisions of

a state statute, it would seem that the legal effect should be the same as in the case of an ordinary proprietor. Assuming this to be so, the effect of the plat was to vest in the city the legal title to the streets and public grounds in Fort Dearborn addition. The United States retained no interest in them either legal or equitable. Its rights in the property were as completely extinguished as if it had made an absolute and unconditional conveyance.

Independently of this, it is clear upon other grounds that the title of the United States has been completely devested. The sale of the lots as delineated on the plat and with reference to it, was in law an effectual dedication of the streets and public grounds for municipal uses. The purchasers of the lots acquired a special interest in the streets and public grounds on which their lots abutted, and the United States could make no disposition of them after the sale, inconsistent with the use to which they had been dedicated. When the lots were sold the United States had no more land to dispose of in that fractional sectional section. It follows as a necessary legal conclusion, according to the doctrine laid down by this court in *Pollard's Lessee* v. *Hagan*, (3 How., 212), that the tract then ceased to be a part of the national domain, and the title to so much of it as had been dedicated to public use became vested in the state, unless by force of the state statute the fee passed to the city, or unless, upon common law principles,* the conveyance of the lots carried the fee to the purchasers.

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* *Banks* v. *Ogden*, 2 Wall., 57.
Hamilton v. *C. B. and Q. R. R. Co.*, 124 Ill., 235.
Bissell v. *N. Y. Central R. R. Co.*, 23 N. Y., 61.

It is alleged in the information that the title of the United States to that fractional section originated in the cession made by Virginia to the United States in 1784. In *Pollard's Lessee* v. *Hagan*, it was held that the United States acquired by that cession the right of soil only for temporary purposes, and to execute the trusts created by the act of the Virginia legislature, and the deed of cession afterwards executed in conformity to it. Both the title to the soil and the right of sovereignty and jurisdiction were ceded to the United States upon condition that the territory embraced in the grant should be laid out into states, which were to be admitted members of the Federal Union upon the same footing as the original states. The lands were to be considered as a common fund for the use and benefit of all the states, "to be "faithfully and *bona fide* disposed of for that purpose, "and for no other use or purpose whatever." When the United States accepted the cession, it agreed to the conditions and became bound to execute the trust, and "as soon as these purposes could be accomplished, the "power of the United States over these lands, as prop- "erty, was to cease." After the admission of the new states, all the land appropriated by the United States for municipal uses, became vested in those states respectively, "to the same extent, in all respects, that it "was held by the states ceding the territories."

To the same effect is the earlier case of *New Orleans* v. *United States*, 10 Peters, 662. In that case, a bill was filed by the district attorney for an injunction to restrain the city of New Orleans from selling a portion of the public quay or levee in that city lying on the bank of the Mississippi river, or doing any other act which should invade the alleged rightful dominion of the United

States over the land, or its possession of it. The United States acquired the title to the land by the French treaty of 1803. By this treaty, Louisiana was ceded to the United States, and in the second article it was declared that "all public lots and squares, vacant lands and all "public buildings" were included in the cession. The proof showed that the land in question had been appropriated to public use ever since the discovery and occupation of the province by France; and it was insisted that the title to the land, as well as the dominion over it, during both the French and Spanish rule, was vested in the sovereign, and that the United States had succeeded to all the antecedent rights of France and Spain. Barracks had been constructed on the premises by the French government before the year 1757, and a custom-house and warehouse had been erected by the Spanish government previous to 1793, and it appeared that the United States had in 1819 erected a building on the land for a custom-house, in which also the courts of the United States were held.

It was argued in behalf of the city that the sovereignty of France and Spain over this property before the cession existed for the sole purpose of enforcing the uses to which it was appropriated, and that this right and the obligations connected with it became vested in the State of Louisiana, and did not continue in the United States after the state was formed. It was, therefore, insisted that the United States could neither take the property and dispose of it, nor enforce the public use to which it had been approriated.

A decree had been rendered in the lower court in favor of the United States; but this court, on appeal, reversed that decree, and held that the suit could not be main-

tained, for the reason that the United States had no interest in the property. Upon this point, the court say:

"In the second article of the treaty, 'all public lots "and squares, vacant lands, and all public buildings, "fortifications, barracks and other edifices, which are "not private property,' were ceded. And it is con- "tended, as the language of this article clearly "includes the ground in controversy, whether it "be considered a public square or vacant land, the entire "right of the sovereign of Spain passed to the United "States.

"The government of the United States, as was well "observed in the argument, is one of limited powers. "It can exercise authority over no subjects, except those "which have been delegated to it. Congress cannot, by "legislation, enlarge the federal jurisdiction, nor can it "be enlarged under the treaty-making power.

"If the common in contest, under the Spanish crown, "formed a part of the public domain or the crown lands, "and the king had power to alien it, as other lands, "there can be no doubt that it passed under the treaty "to the United States, and they have a right to dispose "of it the same as other public lands. But if the king "of Spain held the land in trust, for the use of the city, "or only possessed a limited jurisdiction over it, princi- "pally, if not exclusively, for police purposes, was this "right passed to the United States under the treaty?

"That this common, having been dedicated to the "public use, was withdrawn from commerce, and from "the power of the king rightfully to alien it, has al- "ready been shown; and also, that he had a limited "power over it, for certain purposes. Can the federal "government exercise this power? If it can, this court

" has the power to interpose an injunction or interdict " to the sale of any part of the common by the city, if " they shall think that the facts authorize such an inter- " position.

" It is insisted that the federal government may ex- " ercise this authority, under the power to regulate com- " merce.

" It is very clear, that as the treaty cannot give this " power to the federal government, we must look for it " in the constitution, and that the same power must " authorize a similar exercise of jurisdiction over every " other quay in the United States. A statement of the " case is a sufficient refutation of the argument.

" Special provision is made in the Constitution, for " the cession of jurisdiction from the states over places " where the federal government shall establish forts or " other military works. And it is only in these places, " or in the territories of the United States, where it can " exercise a general jurisdiction.

" The State of Louisiana was admitted into the Union " on the same footing as the original states. Her rights " of sovereignty are the same, and, by consequence, no " jurisdiction of the federal government, either for pur- " poses of police or otherwise, can be exercised over " this public ground, which is not common to the " United States. It belongs to the local authority to en- " force the trust, and prevent what they shall deem a " violation of it by the city authorities.

" All powers which properly appertain to sovereignty, " which have not been delegated to the federal govern- " ment, belong to the states and the people.

" It is enough for this court, in deciding the matter " before them, to say, that in their opinion, neither the

"fee of the land in controversy, nor the right to regu-
"late the use, is vested in the Federal government; and,
"consequently, that the decree of the District court must
"be reversed, and the cause remanded with directions
"to dismiss the bill.

"As it is not necessary, we do not decide on the right
"of the corporation to sell any part of the common, or
"to appropriate it in any other manner than as
"originally designated."

Neither this decision nor that in *Pollard's Lessee* v. *Hagan* has been overruled. On the contrary, the doctrine of these two cases has been adhered to in a long series of decisions, among which the following may be cited:

Goodtitle v. *Kibbe*, 9 How., 471.
Doe v. *Beebe*, 13 How., 25.
Mumford v. *Wardwell*, 6 Wall., 423.
Weber v. *Harbor Commissioners*, 18 Wall., 57.
VanBrocklein v. *State of Tennessee*, 117 U. S., 151, 168.

If the authority of these cases is recognized as binding, it is impossible to hold that the United States has any proprietary interest in the streets or public grounds in Fort Dearborn addition.

To this it may be added, that the claim of the city to the ownership of the public ground bordering upon the lake in fractional sections 10 and 15, between the north line of Randolph street and the north line of block 23, near Twelfth street, was sustained by this court in the Lake-Front case—the reason given for the ruling being that, by the statute of Illinois, the making, acknowledging

and recording of the plats operated to vest the title in the city in trust for the public uses to which the grounds were applicable.

Illinois Central Railroad v. *Illinois*, 146 U. S., 387, 462.

IV. There is another obvious and conclusive answer to every complaint made in the information of anything alleged to have been done upon the public ground in fractional section 10 or the water in front of it.

When the ground was dedicated to public use, all the littoral rights appurtenant to it were dedicated with it. The incidents necessarily followed and were subject to the nature and condition of the principal estate. This principle has been repeatedly recognized in the decisions of this and other courts.

Potomac Steamboat Co. v. *Upper Pot. Steamboat Co.*, 109 U. S., 672, 683.

Barney v. *Keokuk*, 94 U. S., 324.

New Orleans v. *United States*, 10 Peters, 662.

Barclay v. *Howell's Lessee*, 6 Peters, 498.

City of Cincinnati v. *Lessee of White*, 6 Peters, 431.

Godfrey v. *City of Alton*, 12 Ill., 30.

Village of Brooklyn v. *Smith*, 104 Ill., 429.

Cook v. *City of Burlington*, 30 Iowa, 94.

2 Dillon's Munic. Corp., Sec. 634 (497).

If the United States retained the fee in the land, it was only a barren legal title, divested of any right of private use or enjoyment. It held such nominal title only

for the use and benefit of the public, and the legislature of the state, as the representative of the public, had plenary power to regulate and control the public use, and could delegate the exercise of that power to the local municipal authorities. It had, for instance, the unquestionable right to permit the location of the railroad in front of the land, and to authorize or require the construction of a bridge or viaduct over the railroad tracks. By the general law under which the city of Chicago is incorporated the city council is authorized, in express terms, to lay out and extend streets, and "to construct and keep in repair "bridges, viaducts and tunnels, and to regulate the use "thereof." As a matter of fact, the viaduct was built pursuant to the provisions of a city ordinance, which requires that it shall be "forever free to the public and "to all persons having occasion to pass or repass there-"on." This fact is not disclosed in the information, but there is no averment inconsistent with it, nor is it pretended that the viaduct interferes in any way with the use and enjoyment of the ground dedicated to public use.

By the legislative act of April 16, 1869, to which reference is made in the information, the right of the railroad company in and to the land it occupied lying east of a line parallel with and four hundred feet east of the west line of Michigan avenue, in fractional sections ten and fifteen, was confirmed; and to that extent the act was held in the Lake-Front case, by the court below to be a valid exercise of legislative power. It was adjudged (in the words of the decree) "that the present occupancy "and use by the Illinois Central Railroad Company for "purposes of a right of way and not otherwise, of two "hundred feet in width of ground north of the southern

"boundary of the open space known as Lake park (the "west line of said ground so occupied and used being "four hundred feet from and parallel with the west line "of Michigan avenue), and its occupancy and use for "like purposes and not otherwise of the two triangular "pieces of ground immediately south of Randolph street "and east of the company's present tracks, one of them "being east of the breakwater and marked 'built 1873,' "is in accordance with law and the provisions of certain "ordinances of the city of Chicago, to wit: an ordi- "nance entitled 'An ordinance concerning the Illinois "Central Railroad Company,' passed June 14, 1852; an "ordinance or resolution passed by the common council "of said city September 10, 1855, granting said com- "pany permission to curve its tracks westwardly of the "line fixed by said ordinance of June 14, 1852, extend- "ing and carrying said tracks north-westerly as "they approach its passenger-house, and an ordinance "passed September 15, 1856, granting to said company "additional right of way to enable it to approach and "use its station grounds north of Randolph street and "(south of) Chicago river. * * * That the bridge "or viaduct constructed by the Illinois Central Railroad "Company over its tracks and grounds at the foot of "Randolph street, with the approaches thereto, is a "lawful structure, having been erected in conformity to "the provisions of the ordinance legally passed by the "city council of Chicago, July 12, 1880, entitled 'An "ordinance extending Randolph street to Lake Mich- "igan, and providing for viaduct over tracks of Illinois "Central Railroad.'

"And the court doth further find and declare, and it "is hereby adjudged and decreed, that the third section

"of the act of the General Assembly of the State of "Illinois, passed over the Governor's veto, April 16, "1869, entitled 'An act in relation to a portion of the "submerged lands and Lake Park grounds, lying on and "adjacent to the shore of Lake Michigan, on the eastern "frontage of the city of Chicago,' so far, at least, as it "confirms 'the right of the Illinois Central Railroad "Company, under the grant from the state in its charter "* * * and under and by virtue of its appropriation, "occupancy, use and control, and the riparian owner-"ship incident to such grant, appropriation, occupancy, "use and control, in and to the lands submerged or "otherwise lying east of the said line, running parallel "with and 400 feet east of the west line of Michigan "avenue, in fractional sections ten and fifteen,' is a "valid and constitutional exercise of legislative power, "and legalizes as well what was done by said company "prior to April 16, 1869, in the way of filling in the "lake and constructing wharves, piers, tracks, ware-"houses and other works between the Chicago river and "the north line of Randolph street extended eastwardly, "as its occupancy and use for way ground of the two "said triangular pieces of ground immediately south of "Randolph street; and that the subsequent act of the "General Assembly of Illinois, passed April 15, 1873, "in so far as it sought, by repealing said act of April "16, 1869, to revoke or annul said confirmatory clause "of the last named act was void under the constitution "both of Illinois and of the United States."

State of Illinois v. *Illinois Central R. R. Co.*, 33 Fed. Rep., 730, 756, 757, 771.

Those parts of the decree were affirmed, on appeal, in this court; and it may be reasonably assumed that the questions decided are no longer open to controversy.

For the reasons above indicated, it is respectfully submitted that the decree of the court below sustaining the demurrer should be affirmed.

BENJAMIN F. AYER,
Counsel for the Ills. Cen. R. R. Co.

APPENDIX.

ABSTRACT OF AMENDED INFORMATION.

The material averments are:

That by a deed of cession, bearing date March 1, 1784, and authorized by a previous Act of the Legislature of Virginia, that commonwealth granted and conveyed to the United States the territory north-west of the river Ohio, as well the soil as the jurisdiction thereof, on certain conditions—among others, a condition that the states to be formed out of the said territory should be admitted members of the Federal Union, having the same rights of sovereignty, freedom and independence, as the other states; whereby the territory aforesaid, as well the soil as the jurisdiction, became vested in the said United States, for the use and on the conditions therein mentioned.

That by an Act of Congress, of April 3, 1809, a part of the tract of country so ceded was formed into a territory called Illinois Territory; and afterwards, by an Act of Congress of April 18, 1818, was erected into and became the State of Illinois, and a member of the Federal Union, with boundaries which included the waters of Lake Michigan bordering upon the state as far as a line drawn north and south through the center of said lake; "and consequently said State of Illinois having been admitted into this Union upon the same footing, in all respects, with the original states thereof, thereupon became vested with the title to and in the soil under the waters of the said lake within the boundaries aforesaid, the same being navigable waters, as an incident and concomitant of sovereignty and jurisdiction, but in trust to hold for the benefit of the people of the said state and union, and not otherwise."

That the S. W. fractional ¼ of Sec. 10, T. 39 N., R. 14 E., lying within the present limits of the city of Chicago, was a government reservation, called the Fort Dearborn Reservation, and that on June 7, 1839, it was

by authority of the Secretary of War laid off into blocks, lots, streets, alleys and public grounds, and a plat thereof was made and acknowledged by the agent and attorney of the Secretary of War, which was thereupon duly recorded in the county of Cook.

That a part of the ground described on the plat, viz: all that part between the lake on the east and blocks 12 and 15 on the west, is designated as "public ground, forever to remain vacant of buildings," as by the said plat, a true copy whereof is filed with the information and made a part thereof, more fully and distinctly appears.

That "afterward the several lots designated and shown on the plat were sold and conveyed by the United States to divers persons, by and according to the said plat and with reference to the same;" but the United States has never parted with the title to the streets and alleys and public ground designated and marked on the said plat, and still owns the same in fee simple, with the rights and privileges, riparian and otherwise, pertaining to such ownership, subject to the use and enjoyment of the same by the public.

That under and by virtue of an Act of Congress of March 2, 1827, a grant of lands was made to the State of Illinois "for the purpose of aiding the said state in opening a canal to connect the waters of the Illinois river with those of Lake Michigan," among which lands was Fractional Section 15, Town 39, aforesaid.

By an act of the legislature of the State of Illinois, of January 9, 1836, the Board of Commissioners of the Illinois and Michigan Canal was authorized and required to lay off and subdivide the said Fractional Section 15 into town lots, streets and alleys, etc.; and thereupon the said commissioners proceeded to lay off and subdivide the same, or the greater part of it, and to make thereof an addition to Chicago, commonly called and known as Fractional Section Fifteen Addition to Chicago, and on June 13, 1836, the said commissioners made, acknowledged and caused to be recorded, a plat of the said addition, in substantial compliance with the statute of Illinois then in force in that regard (of which plat a true copy is filed with the information and made part thereof); by means whereof the fee of the streets and alleys in

that addition became vested in the municipality of Chicago, for the use of the public, with all the rights, riparian and otherwise, incident to such ownership; and afterwards the said commissioners from time to time sold and conveyed to divers persons, by and according to the same plat, all the lots in that addition.

That the open space shown by the plat to extend from a line of blocks eastward to the lake, and not otherwise designated than as Michigan avenue, was either dedicated and set apart as a street, in which case the same became vested in the municipality of Chicago in like manner as other streets, or else that part of the fractional section is land remaining unsubdivided, and unappropriated to the use for which it was granted; and if it is such unappropriated land, "the same ought to be decreed to revert to the said United States, the purpose for which the same was so granted to the said State of Illinois having been long since fulfilled by the construction and completion of the Illinois and Michigan Canal."

That by an Act of Congress of September 20, 1850, the United States granted to the State of Illinois the right of way through the public lands for a railroad, to be constructed from the southern terminus of the Illinois and Michigan canal to a point at or near the junction of the Ohio and Mississippi rivers, with a branch of the same to Chicago, and also granted certain public lands in aid of the construction of such railroad; by which act it was provided that such right of way should not exceed 100 feet on each side of such railroad.

That by an act of the legislature of Illinois, approved February 10, 1851, the Illinois Central Railroad Company was incorporated, and a grant was made to that corporation of the lands and privileges so granted to the state, for the construction of the railroad as aforesaid; by which act it was provided that the corporation should have the right of way upon, and might appropriate to its sole use and control, for the purposes of that act, land not exceeding 200 feet in width through the entire length of its contemplated railroad, and might enter upon and take possession of, and use, all and singular, any lands, etc., for the location of depots, and stopping-stages, for the purpose of constructing bridges,

dams, embankments, station grounds, engine houses, shops, and other buildings necessary for the construction, completing, laying, maintaining, preserving and complete operation of such railroad, all such lands, waters and privileges as belonged to the state being by the same act granted to the said company, and any others not procurable by voluntary grant or release to be obtained by process of condemnation; and further that nothing contained in the act should authorize the corporation to make a location of its track within any city without the consent of the common council of such city. And afterwards, on March 24, 1851, the Governor of the state, for and on behalf of the same, by deed of that date, granted to the said Illinois Central Railroad Company the lands and rights in said act mentioned.

That afterwards, by an ordinance of June 14, 1852, the common council of Chicago gave permission to said company to extend and build its railroad into the city, northward from the then southern limit thereof, along the shore of the lake, to such grounds as the company might acquire between the north line of Randolph street and the Chicago river, the ordinance providing, among other things, that the company might enter upon and use, for the purpose of its railroad and works to protect the same from the lake, a space 300 feet wide, from near 12th street to the north line of Randolph street in said city (that is to say, for the whole length of the open space shown on the plat of Fractional Section Fifteen Addition, and the whole length of the public ground shown on the plat of Fort Dearborn Addition), the interior or west line of such 300 foot space to be 400 feet east of and parallel with Michigan avenue.

That the Illinois Central Railroad Company in or about the years 1851 and 1852, having accepted the act of incorporation and the said ordinance, by virtue and under color of the same, proceeded to build its railroad, and to extend and complete the same from the southward into the city, on the course indicated in the ordinance, to a terminus near the Chicago river; and said company has ever since maintained and operated its said railroad and continues so to do.

That no authority or license was ever given by the United States to said company for building or maintaining or operating its railroad upon or along the said open space shown on the plat of Fractional Section 15 addition, or the said public ground shown on the plat of Fort Dearborn addition, or any part of those tracts.

That at the time of the subdividing and platting of the south-west fractional quarter of section 10, and said fractional section 15, as aforesaid, the shore line of those two tracts extended eastward at many points beyond the present way ground of the railroad, and, throughout, beyond the west line of said way ground, but when the railroad was constructed, the shore line of the two tracts, by the action of the waters of the lake, had been abraided and washed away for a space of from one to two hundred feet in width, and, therefore, the said railroad, along and upon those two tracts was built upon piles in the water, but a large part of the space so lost, that is to say, all that part extending from Randolph street to near 12th street on the west side of the way ground, has since been filled up by the city of Chicago and is now solid ground.

That by a certain pretended act of the legislature of Illinois passed April 16, 1869, over the veto of the governor, it was attempted:

(1.) To grant the right, title and interest of the state in and to so much of said fractional section 15 as lies north of Park Row in said city, south of Monroe street, east of Michigan avenue, and west of the way-ground of the Illinois Central Railroad Company, to the city of Chicago to be sold by the city, and the proceeds applied to a park fund.

(2.) To confirm to the said Illinois Central Railroad Company certain pretended riparian and other rights of the company in and to the lands, submerged and otherwise, lying east of a line running parallel with and 400 feet east of the west line of Michigan avenue, in said sections 10 and 15, and to grant in fee to the same company all right and title of the state in and to the submerged lands constituting the bed of Lake Michigan, and lying east of the track and breakwater of the same company, for the distance of one mile into the lake, the

entire length of the said south-west fractional quarter of section ten and said fractional section fifteen and the north part of fractional section twenty-two.

(3.) Also to grant in fee to the said Illinois Central Railroad Company, the Chicago, Burlington and Quincy Railroad Company and the Michigan Central Railroad Company, all the right and title of the state in and to the lands, submerged and otherwise, lying north of the south line of Monroe street and south of the south line of Randolph street, and between the east line of Michigan avenue and the track and way of the said Illinois Central Railroad Company, being part of said sections 10 and 15, for a passenger station and other railroad purposes, said act providing that the grantees should pay to the city of Chicago the sum of $800,000, to be likewise applied to such park fund.

That the said Illinois Central Railroad Company, Chicago, Burlington and Quincy Railroad Company, and Michigan Central Railroad Company now give out and claim that the said pretended act was and is a legal act, and passed to them, respectively, a complete title to the property in and by the same attempted to be granted; and the same companies now claim the right and threaten to take possession and exclusive control of the property so in and by the said pretended act attempted to be granted to them, respectively.

That the said pretended act of April 16, 1869, is in violation of the constitution of the state, and is invalid and void, because it attempts to deprive owners of the lake shore in said sections 10, 15 and 22—among which owners are the United States—of property without compensation and without due process of law; and because the said pretended act is private and local and embraces more than one subject, and the subject or main purpose thereof is not expressed in its title; and because the legislature of Illinois had no power to make the supposed grants or any of them; and because the several railroad corporations named could not under their respective charters take or hold the supposed grants or any of them. And, further, that the said pretended act was afterwards repealed by an act of the legislature of Illinois approved April 15, 1873, before said railroad companies or any

of them had taken possession of, or done anything respecting any rights or property attempted to be granted.

That in or about the year 1852 the Illinois Central Railroad Company acquired possession of, and has ever since held, that part of the shore of the lake lying between the Chicago river on the north and Randolph street on the south, being part of the south-west fractional quarter of section ten; on which part of the said shore, at and after the time when said company so acquired possession thereof, the waters of the lake extended west beyond the outer or east line of the way-ground of the said Illinois Central Railroad Company if the same should be extended directly north; and from time to time since so acquiring possession of that part of the said lake shore, the said company has without right or authority filled out and extended the same eastward into the lake, by making wharves, piers, slips and solid ground to the distance of more than 2,500 feet; and this area so reclaimed has been and is not only occupied and used by the Illinois Central Railroad Company for its own tracks, station houses, freight houses, car yards, and other structures pertaining to its business as a railroad company, but has been and is in great part occupied and used under lease or license from that company, and for hire and profit to the same, by the Michigan Central Railroad Company, the Chicago, Burlington and Quincy Railroad Company, the Baltimore and Ohio and Chicago Railroad Company, and the Baltimore and Ohio Railroad Company, and by divers other corporations and individual persons, for station houses, freight houses, elevators, warehouses, lumber-yards, sawmills and other things; and the same area has been and is occupied and used, as well by the said Illinois Central Railroad Company as by the other corporations and individual persons above named, largely for purposes not connected with commerce by the waters of the lake.

That the Illniois Central Raiiroad Company has built and now maintains a high bridge or viaduct on a line with Randolph street, over the railroad tracks of that company, on a part of the said public ground shown and marked on the said plat of Fort Dearborn addition, as " public ground, for ever to remain vacant

of buildings," and on land reclaimed from the water adjoining that part of the public ground aforesaid.

That in the year 1855, said Illinois Central Railroad Company, without any lawful right or authority, but claiming to act under some pretended ordinance of the city of Chicago, took possession of and laid its tracks upon a certain part of the public ground shown upon the plat of Fort Dearborn Addition, to wit: the triangular tract described as follows: Beginning on the north line of Randolph street, 100 feet west of the way-ground of the Illinois Central Railroad Company, thence east along that line to the way-ground aforesaid, thence south along the same 200 feet, thence north-westerly to the place of beginning.

That in or about the year 1856, the said Illinois Central Railroad Company, without lawful right or authority, but claiming to act under some pretended ordinance of the city, took possession of and appropriated to its own use a certain part of the lake-bed adjoining the public ground shown upon the plat of Fort Dearborn addition described as follows: Beginning on the east line of the way-ground of the Illinois Central Railroad Company, 700 feet south of the north line of Randolph street extended eastward, thence north to that line, thence east about 775 feet, thence southwesterly to the place of beginning.

That in or about the year 1873, the said Illinois Central Railroad Company, without lawful right or authority, but claiming to proceed under the said pretended act of April 16, 1869, took possession of and appropriated to its own use a certain part of the lake-bed adjoining partly the said public ground shown on the plat of Fort Dearborn Addition, and partly the open space shown on the plat of fractional section fifteen, that is to say, the part comprised within the boundaries beginning on the east line of said way-ground of the Illinois Central Railroad Company, 1,400 feet south of the north line of Randolph street, and running thence north to the southerly point of the triangular tract last above described, thence along the easterly line thereof 450 feet, and thence southerly to the place of beginning. And since taking possession of the three triangular tracts

above described, the said Illinois Central Railroad Company has filled up the same with earth and laid railroad tracks upon the same, and now holds and uses the same for its own purposes.

That the said Illinois Central Railroad Company, at divers times since the construction of its railroad as aforesaid, has entered upon, and attempted to take possession of, 100 feet in width of the lake-bed adjoining the way-ground of its said railroad on the east, along the said fractional section fifteen.

That the city of Chicago claims to hold the title to the open space on the plat of fractional section fifteen, and to have the right as riparian owner to build and make piers, wharves and docks in the outer harbor, along the same open space; and also claims the same rights or interests in the public ground shown on the plat of Fort Dearborn Addition; but whatever title, rights, or interests the city may have in the premises are subject and subservient to the superior rights of the United States.

All of which wrongful acts, doings, appropriations, claims and pretenses are contrary to right and tend to the injury of the said United States, and are respectively misappropriations of and encroachments upon, and unjust claims and pretences concerning lands and property of the United States, and are clouds on their title to the same.

The prayer in the information is, that the "ultimate title and property to and of the said public ground shown on the said plat of Fort Dearborn Addition, and the said open space shown on the said plat of fractional section fifteen addition, may be decreed to be in the United States"; that the said pretended act of the legislature of April 16, 1869, may be decreed to be void; and that the said railroad companies and the city of Chicago may be restrained by injunction from exercising or attempting to exercise any right, power or control over any part of the several parcels of land above described by virtue or under color of the said pretended act, or of any ordinance or license of the said City of Chicago; and that the said Illinois Central Railroad Company may be restrained from constructing any piers, wharves or docks in the said lake, and from using or attempting to use or control any made ground, or any piers, wharves or other

constructions made or built by or for the said company to the east of the 200-foot strip of way-ground of its said railroad, and from taking or exacting any toll, or payment for the use of any such made ground, pier, wharf or other construction; and that the City of Chicago may be restrained from exercising any power or control over the said open space shown on the plat of Fort Dearborn Addition, and the said open ground shown on the plat of Fractional Section Fifteen Addition, in contravention of the said rights of the United States; and that the said Illinois Central Railroad Company may be required to quit and yield possession of all land and made ground by the said company taken and held without right as aforesaid; and that all clouds upon the title of the United States to any of the said parcels of land above described may be removed; and that any and all rights, interests and claims, as well of the parties defendant as of the United States, in the premises, may be adjudicated and determined; and that the United States may have such further and other relief as may seem meet and the circumstances of the case require.

Demurrer.

The Illinois Central Railroad Company and Michigan Central Railroad Company jointly and severally demur to the information, and for causes of demurrer show:

1. That the information does not state such a case as doth or ought to entitle the United States to any such relief, or to any relief, as is thereby sought from these defendants, or either of them.

2. The information does not state or show any right of interference on the part of the United States, either at law or in equity, respecting the matters therein referred to; nor does it appear that any constitutional right of the United States is infringed upon, or will be infringed upon, by any of the acts or contemplated acts of these defendants, or either of them.

3. The information does not allege or show any violation, or contemplated or threatened violation, of any legal or equitable right of the United States by either of these defendants, and is therefore wholly insufficient as a basis for the relief prayed for.

FILED
MAR 29 1894
JAMES H. McKENNEY,
CLERK

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1893.

No. 331.

THE UNITED STATES OF AMERICA

vs.

THE ILLINOIS CENTRAL RAILROAD COMPANY, THE CITY OF CHICAGO, ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

Brief for the City of Chicago.

JOHN S. MILLER,
For City of Chicago.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C.

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The demurrer of the Illinois Central and Michigan Central Railroad Companies to the original information of the United States in this case was heard and determined in the circuit court with the final hearing of the case of *People of the State of Illinois* vs. *The Illinois Central Railroad Company and others*, as shown by the opinion of the court, reported in 33 Federal Reporter, 730. A final decree having been entered in the last-mentioned case, appeals were taken by the

Illinois Central Railroad Company, the People of the State of Illinois, and the City of Chicago to this Court, and were heard at the October term, 1892, the opinion therein being reported in 146 United States Reports, at page 387. That information concerned (1) the ownership of certain grounds upon the shore of Lake Michigan in fractional sections ten and fifteen, in the city of Chicago, lying between the north line of Randolph street on the north, the middle line of Twelfth street on the south, the west line of Michigan avenue on the west, and Lake Michigan on the east (except block 23, at the south end thereof), together with the half block lying west of Michigan avenue and between Washington and Randolph streets, and the rights, riparian and otherwise, incident or pertaining thereto; and (2) the removal and prevention of obstructions and encroachments by the Illinois Central Railroad Company in the waters of the outer harbor at Chicago.

The main questions raised by the information herein were involved in the suit of *The People of the State of Illinois* vs. *Illinois Central Railroad Company* and were decided in favor of the State of Illinois and city of Chicago and adverse to the Illinois Central Railroad Company by this Court on appeal in that case. The ~~decision on the~~ important questions involving the title and rights of the parties to that suit in the navigable waters of the harbor of Chicago and in the lake front property in question herein, the encroachments in the harbor by the railroad company, and as to the validity of the act of April 16, 1869, were therein forever settled as between the State and the city of Chicago on the one hand and the Illinois Central Railroad Company on the other.

The information herein, after the hearing on the demurrer

thereto and the opinion thereon, reported in 33 Federal Reporter, 730, was amended, substantially, we understand, by striking out that part to which the demurrer was not thereby sustained, viz., that part which alleges in substance that the Illinois Central Railroad Company claims the absolute ownership of and threatens to take possession of, use, and occupy the outer harbor of Chicago. Thereupon the court sustained the demurrer which had been filed by the Illinois Central and Michigan Central Railroad Companies, and thereon dismissed the amended information without prejudice to the right of the United States thereafter to institute any appropriate action or proceeding for the purpose of enforcing any rights they may have in the navigable waters of the lake or outer harbor at Chicago.

At this time the City of Chicago, which was a defendant, had not pleaded or answered to the information; but the appellant, The United States, cannot complain of this if its information as amended does not make a good case for relief. It may fairly be inferred from the proceedings that the information was so amended in order that the demurrer, so far as sustained by Mr. Justice Harlan, would go to the entire information.

The only contention made by the learned counsel for the Government on this appeal is that the information is good to the extent that it seeks to restrain appellees from diverting the public ground, marked on the plat of Fort Dearborn addition, in section ten, and thereby dedicated to the public, from the purposes to which it was dedicated.

It will be observed that the only diversion of this ground set up in the information is (1) the right of way over the same held by the Illinois Central Railroad Company under

the ordinances of the common council of 1852, 1855, and 1856; and (2) the pretended grant by the General Assembly of Illinois by the act of April 16, 1869, of this ground to the Illinois Central, Chicago, Burlington and Quincy, and Michigan Central Railroad Companies, for $800,000, to be paid to the city of Chicago.

The first of these alleged acts of diversion, viz., the right or license to the Illinois Central Railroad Company to lay down, maintain, and operate its railroad over this ground, under these ordinances, the city of Chicago is not interested in sustaining and would be content to see defeated; but the same was sustained by the decisions of the circuit court and of this court above mentioned.

The second of the alleged acts of diversion, the pretended grant of portions of this ground to the railroad companies by the act of April 16, 1869, the city of Chicago, as well as the State of Illinois, successfully attacked and defeated in the case and by the decisions above mentioned. That decision is, we believe, acquiesced in by the railroad companies, and no claim is made thereunder. So that the present importance of this suit to prevent the supposed diversions of this public ground in the information alleged is not very apparent.

The city of Chicago is interested, however, in the question whether the Government of the United States has any right or title, or jurisdiction or power, to control or regulate the use of this public ground upon its plat of Fort Dearborn addition, or to maintain any suit for that purpose.

It is submitted that it has not. The United States had no title left. No violation of or diversion of the property from the purpose for which this property was dedicated could en-

title the United States to reclaim this property or any beneficial right therein.

Barclay vs. *Howell's Lessee*, 6 Pet., 507.

By selling and conveying the lots abutting this public ground, shown upon the plat, "to divers persons by and according to the said plat and with reference to the same," as the information alleges was done, the Government is forever estopped from asserting any claim inconsistent with such dedication. The only parties interested in the public use for which this ground was so dedicated are, not the Government, but (1) the owners of lots in the subdivision abutting on such ground who may be presumed to have purchased their lots from the United States on the basis of such dedication, and to have paid more for their lots on account thereof; and (2) the public—the *cestui que use*; and the public and the public use are not in this respect in any way represented by the United States, but by the legislature of the State, and by the local municipal government as a public agency to which the legislature may have delegated such power.

New Orleans vs. *United States*, 10 Pet., 662–737.

The case of *New Orleans* vs. *United States* is closely in point. The first question in that case was, whether, after a dedication of ground to public use by the sovereign, the donor (or his grantee) could maintain a suit against the city which represented such public right to prevent a sale thereof. And the United States claimed in that case, as here, as proprietor.

See argument of Attorney General, 10 Pet., 674–'6.

The United States claimed under a cession from the sovereign making such dedication, and it was claimed on the part of the United States that the *title* did not pass to the city, but was left in the donor making the dedication, and that the United States acquired such title by cession and could by injunction prevent the city from selling the lands as private property; or that if the title was in the city, the United States (as grantee of the donor) could insist on the servitude (the public use) and prevent such sale (p. 675); but the court, recognizing that whether the title passed to the city or not was a controverted question (pp. 721, 722), held that in either event there was no disposable title left in the sovereign or anything more than the jurisdiction or power of regulation, of governing, the police power of conserving or protecting the public use, and that that power, under our system of government, could not pass by the cession to or be exercised by the United States; that "the State of Louisiana was admitted into the "Union on the same footing as the original States. Her "rights of sovereignty are the same, and by consequence no "jurisdiction of the Federal Government, either for pur-"poses of police or otherwise, can be exercised over this "public ground which is not common to the United States. "It belongs to the local authority to enforce the trust and "prevent what they shall deem a violation of it by the city "authorities." (10 Pet., 737.)

Counsel for appellant contends that the case of *New Orleans* vs. *United States* is not in point, because "the relief "was denied the United States on the ground that the "King of Spain had not the power to alienate the public "levee in New Orleans; that the treaty did not pass the

"title to the United States, and that the Federal Govern-
"ment did not succeed to the limited police jurisdiction
"which had been exercised by the King of Spain to regulate
"the use of the quay."

Why did the King of Spain not have the power to alienate the levee to the United States? The cession was certainly broad enough, if there was any proprietary right left in him to alienate after the dedication. The treaty ceded the colony or province of Louisiana, with all its rights and appurtenances, and all public lots and squares, vacant lands, and all public buildings, fortifications, barracks, and other edifices which are not private property (10 Pet., 732, 736). Certainly there was nothing left in the King of Spain after this cession. What was held by the court in that case was that after its dedication to public use the public common in question was withdrawn from commerce; that there was nothing of property right left in the donor, nothing that was alienable. It was held that what was left in the King of Spain after the dedication, viz., the title, in trust for the public use, with the power to conserve the public use in accordance with the dedication, and to prevent the diversion of the ground dedicated from such public use,—could not, *under the Constitution of the United States*, be held or exercised by the Federal Government. All this passed from the King of Spain upon the cession. Who could exercise it? To whom did it pass? To the State of Louisiana, upon her admission into the Union on the same footing as the original States. "It belongs to the local authority," the court say, "to enforce the trust and prevent what they shall deem a violation of it by the city authorities." (13 Pet., 737.)

And this, it will be observed, is held, although the *title*

did not pass by the dedication to the city of New Orleans, but remained in the King of Spain. The question answered by the court is, "If the King of Spain," at the time of the cession, and so after the dedication, "held the land in trust for the use of the city, or only possessed a limited jurisdiction over it, principally if not exclusively for police purposes, was this right passed to the United States under the treaty?" (p. 736.) And the answer is, no; that it belongs to the local authority (the State of Louisiana) to enforce the trust, and prevent what they shall deem a violation of it by the city authorities (p. 737).

The Government, on this appeal, is seeking to exercise that very right and jurisdiction which the court in that case held was not within its constitutional powers.

There is nothing in *United States* v. *Chicago*, 7 How., 185, to sustain the contention of counsel for the Government in this case. There the United States held the property in dispute, at the time when the question at issue arose, as a military site, and for holding such property and exercising jurisdiction therein, although within a State, special provision is made in the Constitution.

The cases cited by the learned counsel for the United States, in which it is held that private property owners, who have dedicated property to public use, may maintain suits to enjoin its diversion, have no bearing upon this case; and in each of those cases cited the complainants still held property abutting, and would, therefore, sustain special injury by such diversion. No such state of facts is shown by this information. The United States have long since disposed of all property in Fort Dearborn addition, as alleged in the information.

It was settled in *Pollard's Lessee* v. *Hagan*, 3 How., 212, that the public lands in the northwest territory, which were ceded by Virginia to the United States, were ceded for the "temporary purposes" provided for in the deed and acts of cession, viz., "as a common fund for the use and benefit of all the United States, to be faithfully and *bona fide* disposed of for that purpose and for no other use or purpose whatever." The right here claimed of conserving or enforcing the public use for which this ground was dedicated is not such a use or purpose as is provided for in such cession. Such a purpose is not temporary, but would require the United States to hold such title in perpetuity. The cession provided for the formation of new States in this territory, and the State of Illinois so formed is the successor and grantee of Virginia of such rights. The plat of Fort Dearborn addition to Chicago, and the sale and conveyance of all the lots therein, was such a disposition as this cession called for of all the property in that subdivision. The Government of the United States had then performed all the trusts provided for in the cession. It had chosen its own method of disposing of the property in Fort Dearborn addition to get the best price, and it is to be presumed got, in the enhanced price of the lots abutting upon the streets, alleys, and public grounds, the price and value of such streets, alleys, and public grounds. The dedication of the ground in question to public use was a part of the sale of the lots.

Nor is there any right of reverter which will justify the United States in regulating the use of this ground. As held by this court in *Barclay* v. *Howell's Lessee*, 6 Pet., 498, 507, even if the public ground thereby disposed of to

public use were being diverted from such use, or if buildings were put thereon by the city of Chicago, "the property "dedicated would not revert to the original owner. The "use would still remain in the public, limited only by the "conditions imposed by the grant."

II.

The title to the public ground in question passed by the plat to the city of Chicago as if by a deed with general warranty.

The United States in disposing of this land by employing the form and method for that purpose prescribed by the statute of the State within which the land was situated (which, under that act, is a method of conveyance of the fee of the public ground to the city) is to be held to have intended that its plat should have the same effect as that of any proprietor and vendor. It sold its lots on that basis.

This plat was plainly made in pursuance of, as it was in substantial conformity with, the requirements of the statute of Illinois. Substantial conformity is all that is required (*Gebhart* vs. *Reeves*, 75 Ill., 301; *Zinc Company* vs. *La Salle*, 117 Ill., 411; *City of Chicago* vs. *Rumsey*, 87 Ill., 348). The information alleges that the United States sold and disposed of the lots designated thereon to divers persons, "by "and according to the said plat, and with reference to the "same." The contract by the United States with such purchasers, then, was that the plat was what it purported to be, and that the public ground, as well as the streets and alleys shown thereon, was dedicated to the public and the title thereof vested in the city of Chicago, and the plat operated as a grant with a general warranty.

Under such a plat and dedication no title is left in the donor.

It was held by Mr. Justice Harlan in this case, in the circuit court, that the title to this ground is in the city, and by this Court, in *Illinois Central R. R. Co.* vs. *Illinois*, 146 U. S., 387, 462, 463. The decree in the case appealed from in the case last cited so found and adjudged, and was affirmed in this respect.

III.

The information cannot be sustained as a bill to quiet the title of the Government to the public ground in Fort Dearborn addition, because (1) it has no title, and (2) it has no possession.

While the city of Chicago would have been glad if, upon the argument of the Lake Front case, we could have had the views and argument of the learned counsel for the United States upon the great questions there involved (and suggested in this original information), that case and those questions have reached a final and decisive determination in this Court. But we submit that upon the question remaining in this case and presented in the brief of the Solicitor General the information cannot be sustained.

There is no diversion of this property by the city of Chicago alleged, and there is no right or power in the United States, as there is now no occasion for it, to regulate or protect the public use in this ground. That power solely belongs to the State of Illinois and the city of Chicago.

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For City of Chicago.